

THE ASPPA Journal

ASPPA's Quarterly Journal for Actuaries, Consultants, Administrators and Other Retirement Plan Professionals



FEATURE ISSUE

Life in the *Past Lane*



The ASPPA presidency seamlessly changes hands from Sal Tripodi (right) to Stephen Dobrow (left).

by Sal L. Tripodi, APM

Not too long ago, ASPPA concluded its most successful Annual Conference to date. We had record attendance numbers, a dynamic program schedule that received lots of positive reviews, election excitement generated by our keynote speakers, Mary Matalin and James Carville, a mock Presidential election in the exhibit hall and roving PAC ambassadors and, for me, bittersweet feelings as my year as ASPPA President drew to a close. The “I’m A Sal Pension Pal” ribbons festooning some of the attendees’ badges (courtesy of the ASPPA Conferences department that had also generated many other “fun” ribbons) provided the icing on the cake. It was a great year, and I am so proud of what we have accomplished during the last 12 months.

Continued on page 5

In This Issue:

Tribute to ASPPA Past President Edward E. Burrows (1932 – 2008)

Washington Update

What’s Happening with Audits?

A Meditation on the Definition of Plan Assets

What is Asset Protection Anyway?

Getting Plan Sponsors to Zero: A Business Owner’s View of 401(k) Operations

Grow Your Retirement Business: Establish Yourself as an Expert



ASPPA™

WORKING FOR AMERICA’S RETIREMENT

It's Restatement Time Again!

The EGTRRA restatement process provides a great opportunity to consult with clients regarding the benefits of Automatic Rollovers.

- A fully compliant Safe Harbor rollover solution
- Reduced Plan expenses
- Easy to sign up: one contract covers all rollovers
- No cost to Plan Sponsor nor to TPA
- Eliminate need to track former employees
- Avoid lost participants upon Plan termination

Participants enjoy:

- Low-cost IRA account
 - No account set-up fee
 - Low annual maintenance fees
- High yielding default investment
 - Eleven additional mutual fund offerings for account diversification



Please visit www.autorollovers.com for more information.

AUTOROLLOVERS

6 Rhoads Drive, Suite 7
Utica, NY 13502-6347
1-866-401-5272 x 6941

www.autorollovers.com



Rollovers of designated Roth accounts accepted at no additional cost

Give us your AUTO ROLLOVER business, and we'll throw you a bone!

TPAs are paid \$25* for every account that is rolled into the AUTO ROLLOVERS Program!

Could it be any simpler?

TPAs have earned over \$ 215,550 to date

\$

2	1	5	,	5	5	0
---	---	---	---	---	---	---

* \$25 paid on accounts of \$200 or more

Editor in Chief

Brian H. Graff, Esq., APM

The ASPPA Journal Committee

Kimberly A. Flett, QPA, QKA, Co-chair

Teresa T. Bloom, APM, Co-chair

James T. Comer

Catherine J. Gianotto, QPA, QKA

William C. Grossman, QPA

Stacey D. Hall, QPA, QKA

William G. Karbon, MSPA, CPC, QPA

Barry Kozak, MSPA

Michelle C. Miller, QKA

Mary L. Patch, QKA, QPFC

Peter K. Swisher, CPC, QPA

Nicholas J. White

David J. Witz

Editor

Chris L. Stroud, MSPA

Associate Editor

Troy L. Cornett

Production Manager

Troy L. Cornett

Technical Review Board

Michael Cohen-Greenberg

Barry Kozak, MSPA

Marjorie R. Martin, MSPA

Robert M. Richter, APM

Nicholas L. Saakvitne, APM

Advertising Sales

Dawn Bancroft

Design and Layout

Lynn A. Lema



ASPPA OFFICERS

President

Stephen L. Dobrow, CPC, QPA, QKA,
QPFC

President-Elect

Sheldon H. Smith, APM

Senior Vice President

Thomas J. Finnegan, MSPA, CPC, QPA

Vice President

Laura S. Moskwa, CPC, QPA

Treasurer

Robert M. Richter, APM

Secretary

Barry Max Levy, QKA

Immediate Past President

Sal L. Tripodi, APM

Ex-Officio Member of the Executive Committee

Marcy L. Supovitz, CPC, QPA



Tribute to ASPPA Past President Edward E. Burrows, MSPA, COPA

(November 14, 1932 – November 16, 2008)

by G. Patrick Byrnes, MSPA, COPA

Let me tell you a bit about my friend Ed. For starters, he was brilliant, but anyone around ASPPA probably already knows that. In 1973, I had my first humbling experience in hearing Ed speak at the ASPPA Annual Conference. It was terrifying, but also inspiring. He was in awesome command of his subject and had an incredibly wonderful dry wit. Even as a novice in the profession, I learned a lot from Ed and it was fun.

If you were to talk with any number of ASPPA Past Presidents and others, you would glean similar experiences. His brilliance was not just in speaking, but in researching, writing, plan design, society and relationships among professional organizations, as well as legislative and governmental agency matters. It wasn't just what Ed did, it was how he did it. He was very smart, but never took himself too seriously. He could laugh at himself while being right on an issue. In one-on-one conversation he never made me feel inadequate. Over the years he had my back in helping me through complex actuarial issues. Ed was always willing to help a friend. He had lots of friends that he was always helping.

Ed was extremely giving of his time and giant talent. He defined the term "professional volunteerism" by his actions. He was ASPPA's 17th President in 1986. He was the instigator of the "Inter-Sector Group" and served on it for many years. This group is a group of respected members of the various actuarial organizations who periodically meet with key government officials at Treasury, IRS, PBGC and the DOL to gain insights and give advice to each other (sometimes known as arguing the issues—executed with the intent to improve the private pension system).

As you might suspect, Ed was very involved in the ASPPA Government Affairs Committee. He was one of the main drivers of ASPPA's

"National Retirement Income Policy" (NRIP), which was the development of five scholarly papers on how the United States might address everyone's retirement. NRIP may have been a bit before its time in the early 90s, but the ASPPA College of Pension Actuaries (ACOPA) is currently developing this concept as a way of focusing the incoming Obama administration on this critical issue.

In the early 90s, Ed hatched an idea of restructuring ASPPA to include disciplines or colleges that would be specialized. It didn't go anywhere at the time, but in 2005, Ed, Larry Deutsch and Rick Block founded the College of Pension Actuaries (COPA) with Ed as its first President. That did go somewhere – and Ed was alive to see COPA later reformed as a college inside of ASPPA. His actions throughout his 54-year career supported his beliefs. From the formation of COPA, he envisioned what eventually turned out to be ACOPA—actuarial members needed a unified professional voice in preserving and enhancing the defined benefit plan that will actually enable plan participants to retire someday. He also believed that ACOPA needed to help convince Congress and the regulators to support that notion. Ed was a visionary and never gave up.

Outside of his ASPPA involvement, Ed served two terms on the Actuarial Standards Board (ASB) and six years on the Actuarial Board for Counseling and Discipline (ABCD). He was a profound thinker who expressed himself with simple yet powerful language. As part of his work for ABCD, he wrote an article in the July/August 2007 issue of *Contingencies* magazine entitled "Precept 13—A Snitch in Time." He concluded that "Precept 13 exists and must be taken seriously. It's important not as a snitch rule but as a rule designed to help preserve the status of the actuarial profession as a self-regulating body."

Ed was not afraid to take a stand and fight even when he was battling alone. While never seeking the limelight, he was honored at high levels. Ed was the first recipient of the ASPPA Harry T. Eidson Founders Award in 1995. He also received the Jarvis Farley Award from the American Academy of Actuaries in 1998 and the John Hanson Memorial Prize for his excellent paper on “Fixing the Pension Plan Funding Rules” in 2004. Ed was also the first recipient of the Edward E. Burrows Distinguished Achievement Award, established by his COPA colleagues in 2008.



ASPPA Past Presidents Edward E. Burrows, MSPA (1986), Ruth F. Frew, FSPA, CPC (1992) and G. Patrick Byrnes, MSPA (1991)

I had the honor of presenting the COPA award to my friend Ed on August 22, 2008 during the COPA annual meeting in Chicago. While he could not attend the presentation in person, he was able to listen on the phone from his hospital bed.

Ed’s wife Tracy told me that he was thrilled by the award and the comments made by professional colleagues and even more thrilled when COPA voted to become part of ASPPA about a month later. We dubbed the award the “Eddy Humdinger Award.” The definition of humdinger is “a person, thing, action or statement

of remarkable excellence or effect.” The unbelievable courage, drive and indomitable spirit of Ed truly make him a person of remarkable excellence in the pension

actuarial profession—he is a Humdinger! And he leaves us a wonderful legacy that will be with us for a long time. I miss my friend Ed.

Ed’s wife and family are hoping to further Ed’s retirement project, solving the traffic problems of Boston. If you would like to make a donation to support Ed’s project, you can send it to Beth Milkovits at The Boston Foundation, 75 Arlington Street, Boston, MA 02116. Donations would be made payable to The Boston Foundation and in the memo

section put “Ed Burrows Charitable Fund.”



G. Patrick Byrnes, MSPA, COPA, EA, MAAA, is founder and president of Actuarial Consultants, Inc. in Torrance, CA. Pat is an ASPPA Past President, Founding Co-chair of the Los Angeles Benefits Conference, Founding Director of COPA and Co-chair of the ACOPA Transition Team. He is also a Harry T. Eidson Founders Award recipient and was presented the Commissioner’s Award from the Internal Revenue Service. Most importantly he was a friend of Ed’s. (pat.byrnes@acibenefits.com)

contents

- 3 Tribute to ASPPA Past President Edward E. Burrows, MSPA, COPA (1932 – 2008)
- 10 Washington Update
- 13 What’s Happening with Audits?
- 22 A Meditation on the Definition of Plan Assets
- 28 2008 Harry T. Eidson Founders Award
- 30 Thank You to All 2008 ASPPA Annual Conference Participants!
- 32 2008 Educator’s Award Presented to Thomas J. Finnegan, MSPA, CPC, QPA
- 33 2008 Martin Rosenberg Academic Achievement Awards
- 34 What is Asset Protection Anyway?
- 38 Getting Plan Sponsors to Zero: A Business Owner’s View of 401(k) Operations
- 42 Grow Your Retirement Business: Establish Yourself as an Expert
- 46 Latest Additions to the ASPPA Board of Directors
- 48 ASPPA PAC Faces New Challenges in 111th Congress
- 49 GAC Corner
- 50 Focus on Volunteers
- 53 ABC of Chicago Focused on Growing Membership
- 54 ABC of the Delaware Valley Completes Busy Year with Networking Reception
- 56 Welcome New Members and Recent Designees
- 57 Calendar of Events
- 58 Fun-da-Mentals

CONTINUED FROM PAGE 1

The ASPPA College of Pension Actuaries (ACOPA)

Perhaps what I am most excited about is the formation of the ASPPA College of Pension Actuaries (ACOPA), a result of several years of negotiations between ASPPA and COPA. I devoted a previous article in *The ASPPA Journal* to the process that led to ACOPA and why I believe it is an extremely positive development for ASPPA. During the past two years, I have had the privilege, as part of my duties as the ASPPA President-Elect and ASPPA President, to serve on the North American Actuarial Council (NAAC) and the Council of US Presidents (CUSP), two bodies that bring together the leaders of the various actuarial organizations (those in the US, Canada, and Mexico, in the former, and only those within the US in the latter). Over the years, particularly among the actuarial organizations within the US, there have been periods of tension and even animosity. But I have observed a significant movement away from the negative, and an embracing of a new era of collaboration and cooperation. Our formation of the ASPPA College of Pension Actuaries will help further the progress we have made. In some ways, the other US actuarial organizations had become increasingly wary of ASPPA due to the professional diversity of the organization. Some questioned how ASPPA fit into the actuarial profession. The creation of ACOPA turned this thinking around and ACOPA was immediately welcomed by the other societies. Through this "organization within an organization," ASPPA is able to put forth a

more cohesive face as an actuarial society, without compromising the broader focus of the organization as an association of retirement plan professionals. During a transition period ending in 2011, ASPPA's representation in NAAC and CUSP will shift from the leaders of ASPPA to the leaders of ACOPA. This transition was approved without dissent from the four other US-based actuarial organizations, as well as the Canadian Institute of Actuaries and the three Mexican actuarial organizations. Also, the Board of Directors of the American Academy of Actuaries unanimously approved to have the same transition of representation apply to the "Special Director" slots on the Academy Board. Thus, by 2011, the President and President-Elect of the ASPPA College of Pension Actuaries will be the official representatives of ASPPA within the actuarial profession. Over the next year, look for a number of new initiatives that will be launched under the aegis of ACOPA to better serve ASPPA's actuarial members and the pension actuarial profession in general.

Staying in Tune "to the MAX"

One of my pet projects started a couple of years ago is MAX, the Member Analysis and eXpectations Subcommittee, our membership survey group. MAX officially launched in 2008, and it already has conducted a number of surveys relating to various topics important to our members. Through these surveys, we hope to improve membership services, stay in touch with the issues that our members find most



The ASPPA Journal is produced by The ASPPA Journal Committee and the Executive Director/CEO of ASPPA. Statements of fact and opinion in this publication, including editorials and letters to the editor, are the sole responsibility of the authors and do not necessarily represent the position of ASPPA or the editors of *The ASPPA Journal*.

The American Society of Pension Professionals & Actuaries (ASPPA), a national organization made up of more than 6,500 retirement plan professionals, is dedicated to the preservation and enhancement of the private retirement plan system in the United States. ASPPA is the only organization comprised exclusively of pension professionals that actively advocates for legislative and regulatory changes to expand and improve the private pension system. In addition, ASPPA offers an extensive credentialing program with a reputation for high quality training that is thorough and specialized. ASPPA credentials are bestowed on administrators, consultants, actuaries and other professionals associated with the retirement plan industry.

© ASPPA 2009. All rights reserved. Reprints with permission. ASPPA is a not-for-profit professional society. The materials contained herein are intended for instruction only and are not a substitute for professional advice. **ISSN 1544-9769.**

To submit comments or suggestions, send an e-mail to theasppajournal@asppa.org. For information about advertising, send an e-mail to dbancroft@asppa.org.



4245 North Fairfax Drive, Suite 750
Arlington, VA 22203
P 703.516.9300 F 703.516.9308
www.asppa.org

important and add value to being an ASPPA member. MAX is populated only by ASPPA members and is representative of a cross section of ASPPA's professional disciplines and job responsibilities. The MAX members are rotated over staggered two-year terms. If you are interested in being a part of MAX, please let our volunteer services know.

ERPA's in the AIRE

A crowning achievement for ASPPA this year came through its participation in AIRE, the American Institute of Retirement Education, a partnership between ASPPA and the National Institute of Pension Administrators (NIPA). And if all of those acronyms are not enough, let's not forget ERPA, the Enrolled Retirement Plan Agent, a new practice designation created by the IRS (see Circular 230). AIRE was awarded the contract to administer the ERPA exam. Please refer to my article in the last issue of *The ASPPA Journal* for more details on this program. We are very excited about working with NIPA, through AIRE, in this endeavor.

Many of you participated in a free webcast conducted by Brian H. Graff, Esq., APM, our Executive Director/Chief Executive Officer, Bob Long, APM, the volunteer Co-chair of the Education and Examination Committee, and me to learn about ERPA and its impact on ASPPA's credentialing program. ASPPA conducted a job analysis of the CPC and, as a result of that, is restructuring the CPC program to provide a clearer path for advancement in the retirement field that we hope

many ERPAs will take advantage of, as well as those who have come up through ASPPA's credentialing path as QPAs, QKAs and QPFCs.

New Conferences

This year saw the launch of ASPPA's first Women's Business Leaders Forum. I had the good fortune to attend the inaugural event. There was so much energy and positive feedback generated from those couple of days. Over the next several months, you will be hearing about another new conference, devoted to the "decumulation" phase of retirement. ASPPA will be partnering with the Financial Planning Association (FPA) to bring you this conference. The partnering contract was signed recently. Stay tuned!

Now I Know My ABCs

After 18 months, we brought to a close this year a Task Force on the ASPPA Benefits Councils (ABCs). The charge of the Task Force was to review the procedures and structure of the ABCs and to make recommendations to the Board of Directors to improve the program, to ensure that the ABCs operated in a manner consistent with ASPPA's strategic plan and to ensure that ASPPA provided the services to the ABCs that would be necessary for their continued growth and financial health. What emerged from the Task Force were several thoughtful, balanced proposals that I believe will improve the ABC program and help bring ASPPA's message

Become an IRS Enrolled Retirement Plan Agent



Register Early!

Registration opens March 1

**Summer ERPA Exam Window
begins July 6, 2009.**

For additional information visit
www.erpalexam.org



to the regional level. The Board approved these proposals, and during the next year they will be implemented. You should know that the Task Force was in periodic contact with the liaisons from each of the 17 ABCs and the proposals that emerged were sensitive to the many comments and concerns that were expressed by these liaisons. For those of you involved in your local ABCs, I encourage you to stay involved and to assist your local chapter in transitioning to the new structure.

And So Much More

The several items I highlighted above were perhaps the most significant for me. But we accomplished so much more as an organization this year, due to the efforts of the ASPPA leadership (the ASPPA Board of Directors and Executive Committee), the leaders of the individual committees (Conferences, Education and Examination, Finance and Budget, Government Affairs, Marketing, Membership and their many subcommittees) and the hundreds of volunteers who work on these committees, and the dedicated, invaluable ASPPA staff. These accomplishments include:

- the establishment of a Technology Committee that will focus on the use of technology for delivery of conferences, education and membership services;
- a new legislative agenda created by the Government Affairs Committee that will serve as a template for important new legislative initiatives that ASPPA will be bringing to Capitol Hill over the next couple of years;

- the creation of a new affiliate membership category for students, so individuals enrolled in college or advance degree education can become more involved with ASPPA before they launch their careers in the retirement field;
- a review of ASPPA's continuing education requirements that resulted in approval by the Board of a new professionalism/ethics component;
- the approval by the Board to bring to the membership a proposal to create a new credential for professionals who work with 403(b) plans and governmental 457(b) plans;
- the creation of the first round of Web-based education coordinated with ASPPA's credentialing programs, being offered through IPFW (Indiana University-Purdue University Fort Wayne campus);
- the increase in awareness and utilization of the ASPPA Recordkeeping Certification program;
- the commencement of a task force within the Membership Committee to explore the needs of business owners of firms employing retirement professionals; and
- a decision to implement more robust policies, both for ASPPA staff and for ASPPA's officers and leaders, with respect to sexual harassment and other unwelcome behavior, not in response to any incidents, but to ensure that our organization provides a safe, professional atmosphere for its employees and its volunteers.



Ready to Earn Your Enrolled Retirement Plan Agent Designation?

Exams begin July 6, 2009

Resources and tools available to help you prepare:

Study Guide

ERPA Study Guide for ERPA Exam Part I and Part II is available for purchase to compliment the official exam syllabus as part of your study program.

Enrolled Retirement Plan Agent Online Review Courses

ERPA Exam Part I:

Compliance and Operational Issues

ERPA Exam Part II:

Plan Documents, Reporting and Distribution Issues

For additional information or to purchase the ERPA preparation study guide or courses, please visit www.airellc.org

The ERPA exam registration window officially opens March 1, 2009

Register at www.erpaexam.org

Register early to assure maximum exposure to valuable information and to obtain the official exam syllabus for both parts.

 **American Institute
of Retirement Education**
A Partnership of ASPPA & NIPA

State of the Industry—Looking Forward to the Future

On Sunday, October 19, 2008, at the beginning of the ASPPA Annual Conference, we held the annual Business Meeting of ASPPA members. At that meeting, I was asked to deliver the “State of the Industry” Address. It sounded like a good idea at the time the Annual Conference Committee was planning the program last January, but the timing couldn’t have been worse! As you know, the financial markets took an historically bad hit recently, and the retirement industry will be under intense scrutiny over the next few years as part of the government’s reaction to this financial crisis. As I noted in my speech, these recent developments present a number of challenges both for ASPPA, as an organization, and its members. But I strongly believe that our organization has never been stronger, and we are uniquely positioned to respond appropriately to the current situation. More importantly, I believe that our response can serve both the interests of our members and the needs of the retirement system. “Working for America’s Retirement” is our tag line, and we must not lose sight of that.

What Can ASPPA Do as an Organization?

- We must continue to focus on employment-based retirement programs and continue to make the case that these programs represent effective methods of ensuring adequate retirement savings.
- We must continue to educate retirement plan professionals, and raise the level of professionalism through our conference and educational offerings.
- We must promote bold, creative legislative initiatives, and fight the “bad” initiatives that are counterproductive to a coherent national retirement policy.

- We must continue to work with the governmental agencies, especially the Treasury, the IRS, the DOL and the PBGC, to promote sound administration of the rules governing our industry.

- And we must *evolve*. If we become stagnant, we will do our members—and the retirement system—a disservice.


What Can ASPPA’s Members Do?

- Master the new rules—through mastery of your profession you will be able to promote retirement plan coverage, meet clients’ business needs, help secure adequate retirement for America’s workforce and facilitate employee retirement education.
- Face the challenges of new regulatory and legislative developments—use them to the advantage of the private retirement system.
- Be active within ASPPA—participate in the myriad of volunteer opportunities and support ASPPA’s governmental affairs activities through the Political Action Committee and grassroots efforts.

I ask ASPPA and its members to meet the following challenges we face in the retirement industry.

- Help the larger number of retirees in the next two decades face the challenges of decumulation.
- Continue the progress we have made on the accumulation side by adding to the ranks of employers who sponsor retirement plans and expanding the coverage of America’s workforce in these retirement programs.
- Capture future generations of retirement plan professionals. We need to be thinking about who a retirement professional will be 20 years from now, what kind of services he or she will be offering and what type of education he or she will need.
- Enhance the professionalism and standards of the industry. Professionalism is our hallmark and the key to a robust, workable private retirement system.

We are Up to These Tasks!

I look forward to working with all of you in the future in my new capacity as an ASPPA Past President! Life in the *Past Lane* should be interesting. Thank you for the opportunity to have served as your President. 

.....
Sal L. Tripodi, APM, JD, LLM, is the principal of TRI Pension Services, a nationally-based consulting firm in Highlands Ranch, CO. He is the author of The ERISA Outline Book. Sal is Immediate Past President of ASPPA. TRI Pension Services provides numerous in-house seminars for financial institutions, administration firms and other pension service providers throughout the country and also publishes a quarterly newsletter (ERISA Views). For more information about TRI Pension Services, visit www.cybERISA.com. (cybERISA@aol.com)



Registration is open!

2009

Advisors Working for America's Retirement



The ASPPA 401(k) SUMMIT

The Forum for Retirement Sales and Investment Professionals

March 22-24, 2009

Manchester Grand Hyatt San Diego | San Diego, CA

Not to be missed:

*Noted economist Dr. Arthur B. Laffer
on The Condition of Our Nation*

www.asppa.org/summit

Official Marketing Sponsor:



Official Publication Sponsor:



ASPPA™

WORKING FOR AMERICA'S RETIREMENT

Register early and SAVE – Early registration deadline is February 13, 2009



WASHINGTON UPDATE

by Judy A. Miller, MSPA

Election Day has come and gone. President Obama and Congressional leadership are at work preparing for the new year. ASPPA is also looking forward, preparing for the future with all the excitement and challenges of not only a new Congress, but a new Administration.

The financial crisis made 2008 different from others in recent history. The “lame duck” Congress struggled with how to address the current economic downturn. A December session did not produce legislation to bailout auto companies, but did provide time to work out an agreement on a pension bill. Now the focus turns to a stimulus package that is expected to be considered in 2009.

ASPPA Members Speak on the Hill

In normal presidential election years, Washington pretty much shuts down at the end of September so members can go home and campaign. 2008 was far from normal. Congress recessed after passing the Emergency Economic Stabilization Act in early October, but during the recess the Hill was alive with the sounds of Congressional hearings on matters related to the economic meltdown. ASPPA members were in the thick of the action.

401(k) Plans

In October, the House Education and Labor Committee, lead by Chairman George Miller (D-CA), held two hearings on “The Impact of the Financial Crisis on Workers’ Retirement Security.” Jerry Bramlett was invited to participate in the first hearing which was held on Capitol Hill on October 7. The panel for the second hearing, held in San Francisco on October 22, included ASPPA member Mark A. Davis, QPFC. Press coverage of the hearings focused on Chairman Miller’s



concerns about the 401(k) system, creating concern that his intention was to replace 401(k) plans with some other arrangement. Subsequent to the hearings, Miller made it clear his intention is not to dismantle 401(k) plans, but to “preserve and strengthen 401(k)s” through policies such as improved disclosure and independent investment advice.

Funding Relief

Later in October, the House Ways and Means Committee held a hearing on “Economic Recovery, Job Creation and Investment in America.” ASPPA Board member Martella A. Joseph, MSPA, a member of the ASPPA College of Pension Actuaries (ACOPA), was invited to speak about the need for

immediate funding relief for defined benefit pension plans because of the economic crisis. In advance of the hearing, ACOPA joined more than a dozen other organizations in a letter to Chairman Rangel and Ranking Member McCrery, asking them to enact technical corrections and temporary funding relief to provide businesses with tools to work through the current economic storm. The specific recommendations included asset smoothing and a temporary relaxation of the 10% corridor around the market value of assets, automatic approval of changes in funding method for 2009 and 2010, a more straight-forward transition to the 100% funding target, end-of-year valuation rule-writing authority for Treasury and a fixed 5.5% interest rate for determining IRC Section 415 maximum lump sum benefits. A similar letter with more than 300 signatures was sent to all committees of jurisdiction on November 12. Copies of both letters are available at www.asppa.org/resources/wash-update.htm.

Pension Bill Passes

Congress returned after Thanksgiving and passed one significant piece of legislation—a pension bill! H.R. 7327, the Worker, Retiree and Employer Recovery Act of 2008, included pension technical corrections, relief from required minimum distributions for defined contribution-type arrangements for 2009, a look-back rule to limit restrictions on benefit accruals that might otherwise be triggered by 2008 investment losses and limited funding relief for defined benefit plans that had no deficit reduction contribution for 2007. Technical corrections included provisions ASPPA had argued were especially critical given the economic downturn, such as asset “smoothing,” end-of-year valuation rule-writing authority for Treasury and a fixed 5.5% interest rate for determining IRC Section 415 maximum lump sum benefits. Although the defined benefit provisions in the technical corrections bill have received the most attention, there are other

we make it seem **easy**
(even if it isn't)



Our **on-line** services are designed to alleviate your burdens:

- **Benefit Payment Services**
- **Recurring Payments**
- **Missing Participant / Default IRA**
- **Roth Distributions**
- **Benefit Claim Processing & Lead Generation**
- **Missing Distributee Program**



Call us today! ■ 800.541.3938 ■ penchecks.com

In tough fiscal times, we expect some to question whether or not the private pension system is providing \$100 billion worth of value. We will be prepared to show that the answer is a resounding “Yes.”

important provisions. For example, permissible withdrawals under automatic contribution arrangements will no longer be conditioned on satisfying ERISA §404(c)(5), will be available to SIMPLE and SEP IRAs and will be disregarded in applying the annual limit on elective deferrals under IRC §402(g)(1). In addition, the requirement that gap period income be distributed on excess deferrals [*i.e.*, deferrals in excess of the IRC §402(g) limit] is eliminated. For more information on H.R. 7327, see ASPPA *asap* 08-44 available at <https://router.asppa.org/eseries/scriptcontent/memonly/asap/asaps/08-44.pdf>.

ASPPA is urging Congress to include more broad-based funding relief—such as a temporary relaxation of the 10% corridor around market value of assets and automatic approval of changes in funding method for 2009 and 2010—in any economic recovery legislation considered early in 2009. Also, with the first round of PPA technical corrections enacted, the process will begin again in the new Congress. There will be an opportunity to present corrections that did not make it into the current bill, especially new issues that have arisen as we work to implement PPA.

Looking Forward

Administration


As a candidate, Obama's retirement policy proposals included reforming bankruptcy laws to provide more protection for worker benefits, improving disclosure of pension fund investments, eliminating income taxes for seniors making less than \$50,000, providing automatic workplace savings and expanding the Saver's Credit. The broad strokes of President Obama's policy goals and ASPPA's goals are in alignment. ASPPA has been an advocate for improved disclosure, as well as expansion of workplace savings opportunities and the Saver's Credit. In fact, ASPPA's Legislative Relations Committee (LRC) has been developing proposals to expand coverage, simplify the qualified plan system and help retirees address longevity risk. Executive Director/CEO Brian H. Graff, Esq., APM, and Chief of Actuarial Issues Judy A. Miller, MSPA, met with Obama transition team representatives in early December to discuss ASPPA's priorities and concerns. ASPPA will continue to educate and advocate proposals to accomplish these goals that enhance the private employer-sponsored retirement system.

Congress

The Joint Committee on Taxation estimates that “tax expenditures” for employer-sponsored retirement plans in 2009 will exceed \$100 billion. (The Fall 2008 issue of *The ASPPA Journal* describes a study commissioned by ASPPA and other groups that disputes the value of this measurement, but Congress still relies on these estimates.) In tough fiscal times, we expect some to question whether or not the private pension system is providing \$100 billion worth of value. We will be prepared to show that the answer is a resounding “Yes.” We also expect to face questions regarding whether or not the current qualification rules provide sufficient protection for rank and file employees. ASPPA staff and members will need to educate lawmakers and their staffs about how the rules work in practice, support reasonable changes to expand coverage and oppose unnecessary or destructive proposals.

Agencies

The change in party for the executive branch means a new legislative agenda coming from the White House, but it also means new leadership at the Treasury, the IRS and DOL/EBSA. President Obama's advisors are reviewing the former Administration's policies with an eye to what changes can be made quickly by executive order. Final regulations not effective before Obama took office could be put on hold with the stroke of a pen. ASPPA's Government Affairs Committee and staff will not only be busy on the Hill, but working with the IRS and DOL on the regulatory agenda.

Yes—change is coming. ASPPA's goal is to make change work for the private employer-sponsored retirement system. We are preparing to do just that. 



Judy A. Miller, EA, MSPA, FSA, Chief of Actuarial Issues, joined the ASPPA staff in December 2007. Prior to joining the ASPPA staff, Judy served as senior benefits advisor on the staff of the US Senate Committee on Finance from 2003 to November 2007. Before joining the congressional committee staff, Judy provided consulting and actuarial services to employer-sponsored retirement programs for nearly 30 years. A native of Greensburg, PA, she enjoyed living in Helena, MT from 1975 until she moved to Washington, DC in 2003. Immediately before leaving Montana, she was a shareholder in Anderson ZurMuehlen & Co., providing consulting services through its affiliate, Employee Benefit Resources, LLP (EBR). Prior to joining EBR, she was vice president of Hendrickson, Miller & Associates, Inc. for 15 years. Judy is a fellow of the Society of Actuaries, an MSPA with ASPPA and an Enrolled Actuary. She received her Bachelor's degree in Mathematics from Carnegie Mellon University in Pittsburgh, PA. (jmiller@asppa.org)

What's Happening with Audits?

An Interview with Monika A. Templeman, Director, Employee Plans Examinations

by Nicholas J. White



Monika Templeman and Nick White have known each other approximately 20 years and worked together in the past in the Employee Plans Division of the IRS, out of the Los Angeles Key District office, in what was then known as the IRS's Western Region. Recently, Nick interviewed Monika to get her insights on audits.

Monika has been with the Internal Revenue Service since 1988 and has more than 15 years of experience in IRS management positions. Her previous position was as the EP Area Manager, Great Lakes, and she acted as the Director EP Rulings and Agreements in 2005 after graduating from the Executive Readiness Program. A native of California, Monika earned a JD Degree from California Institute of Law in 1980 and was admitted to the California Bar.

The following is a reprint of the interview:

Nick: Given our history, it's an honor and a special opportunity for me to interview you today. Thank you for agreeing to speak with me.

Monika: Nick, it is a pleasure to speak with you today.

Nick: What are your responsibilities as Director of Examinations?

Monika: As Director of EP Examinations, my primary responsibility is to ensure compliance by developing and implementing enforcement programs that have a positive impact on the retirement plan system. As you know, there are over one million plans, not counting 403(b) and 457 plans and IRAs, and approximately \$12 trillion invested in these retirement plans. Now, more than ever, it is crucial to ensure that plans are operating in accordance with their terms and providing appropriate benefits to the plan participants. Obviously, when



our examination presence diminishes, the opportunity for non-compliance increases and current economic factors make people more susceptible to promoter schemes. Thus, it is important to maintain an active and vigorous examination program that protects and preserves our retirement system. I feel it is equally important to ensure the right balance between service and enforcement. My goal is to develop and deliver compliance programs that strike that balance. I am responsible for five Area Offices with examination groups nationwide. I am also responsible for EP Examination Planning and Review (EP&R) that handles the case selection, case processing and two separate review functions, as well as program planning, analysis and monitoring. In addition, the EP Field Actuarial Group and the Employee Plans Compliance Unit (EPCU) are part of EP Exam. In short, I am responsible for a complex function with approximately 500 employees and many multi-faceted compliance programs. In a broader sense, I am also responsible for working closely with EP Rulings and

Agreements and Customer Education and Outreach, in what I call a holistic approach, to preserve and enhance the retirement system in America. Employee Plans has regulatory responsibility that extends beyond tax collection to ensure that the huge expenditure in the benefits arena (estimated \$119 billion annually) contributes to retirement security of American workers. The EP Examinations function is part of this equation.

Nick: For some time now EP has offered online compliance assistance for 401(k) plans through the "401(k) Fix-It Guide." and EP has recently added the "SEP Fix-It Guide" for sponsors of Simplified Employee Pension plans. What information do you have regarding the use and effectiveness of these online resources, and is EP planning on providing additional "Fix-It Guides" for other types of retirement programs?

Monika: The IRS Fix-It Guides are great tools to help plan sponsors and their advisors to find, fix and avoid common retirement plan mistakes. The Fix-It Guide is the brain child of Joyce Kahn, Manager, Voluntary Compliance, who worked with EP Customer Education and Outreach (CE&O) to produce a terrific Web-based product that illustrates how and when plan sponsors can use the Employee Plans Compliance Resolution System (Self Correction Program, Voluntary Correction Program and Audit Closing Agreement Program) to correct plan errors and keep their plans qualified. Best of all, they provide ways to avoid mistakes in the first place and explain legal requirements related to tax favored retirement plans and emphasize the importance of proper maintenance and internal controls. The "401(k) Fix-It Guide" was the first one produced and posted to the Web at www.irs.gov/ep. A Retirement Plans Pitfall Workshop was delivered at each of the IRS Nationwide Tax Forums this summer to encourage the use of online IRS Fix-It Guides to keep plans in compliance. The "SEP Fix-It Guide" is currently available online. To answer the second part of the question, additional guides are being developed for SIMPLE IRA plans, SARSEPs and 403(b).

Stay a part of it all!

dues reminder

Renew online www.asppa.org/memberlogin

It's simple and saves you time.

Lost your hard copy invoice? You can print one out online.

Questions? Contact the Membership Department at 703.516.9300.

Renew Before February 17, 2009 to avoid late charges.

Nick: What is the Employee Plan's Compliance Unit (EPCU) and what should plan sponsors and their advisors know about it?

Monika: The EPCU has proven to be an extremely successful innovation that allows us to leverage our resources and expand our compliance contacts. The Unit was established to focus on areas of potential non-compliance by using methods to pinpoint specific problem areas or anomalies either in data or identified trends. The EPCU is in its fourth year and has made more than 8,000 compliance contacts and completed several important compliance projects since its inception. In the EP Exam function we utilize the EPCU to leverage compliance in several ways. The typical way is to conduct compliance checks, which allow us to reach out and touch a larger portion of the EP universe with minimal taxpayer burden, positively impact compliance and increase our enforcement presence. Compliance checks are not audits and are limited to a single issue. Since many questions/problems can be resolved without an audit, using the EPCU to conduct compliance checks leverages resources and significantly increases compliance coverage. A compliance check is usually handled through correspondence and can involve determining whether a record keeping or reporting requirement is being met. They are also utilized to match information from a

return to other information to resolve errors or discrepancies to help educate taxpayers at the same time. A compliance check contact does not preclude the use of our voluntary compliance programs under EP Compliance Resolution System (EPCRS) to correct plan errors in an inexpensive and non-draconian way, unless the issue cannot be resolved and is referred for audit. We also use the EPCU to conduct questionnaire studies and to assist in identifying abusive emerging issues. So you can see how the EPCU is an excellent way for us to reach a lot more folks. Detailed information about the EPCU and current projects are available at our EPCU Web page, www.irs.gov/ep.

Nick: What is your highest profile EPCU Project?

Monika: The 403(b) Universal Availability Project is the highest volume and most visible

we make it seem **easy**
(even if it isn't)

Our **on-line** services are designed to alleviate your burdens:

- **Benefit Payment Services**
- **Recurring Payments**
- **Missing Participant / Default IRA**
- **Roth Distributions**
- **Benefit Claim Processing & Lead Generation**
- **Missing Distributee Program**



Call us today! • 800.541.3938 • penchecks.com

EPCU Project to date. The EPCU contacted more than 3,000 school Districts in more than 40 states and more than 20% had universal availability problems that were voluntarily corrected. This outreach resulted in not only teachers, but also school bus drivers, cafeteria workers, janitors and substitute teachers being included in these plans. The project is continuing in FY 2009 and a future follow-project is in the planning stages. New for FY 2009 is a Multiemployer Certification Project to comply with new requirements for annual certification under PPA 2006 and a 401(k) Questionnaire Project.

Nick: What steps should a plan sponsor take if he or she receives a letter or phone call from a revenue agent notifying him or her of an EP examination of his or her plan? And, once the examination has commenced, what do you see as the best practices for seeing the examination through to its conclusion?

Monika: The most important thing for an employer to do to prepare for an audit after receiving an initial contact letter is to review the included list of items that an agent would like to examine. It is important to contact the agent and ask questions about the particular request and the form of documentation that he or she will need

for the audit. The items requested should be available and organized for the agent's visit. This organization helps eliminate delays and may negate the need for follow-up visits. Good internal controls are crucial for a well run plan. Self audits allow a plan sponsor to find and fix mistakes and prevent the much higher costs of correcting mistakes as a result of an audit. Employers will find Web-based tools at www.irs.gov/ep that provide a wealth of information about the audit process, including an examination process guide that explains the audit from start to finish and a specific audit efficiency guide that was developed with a lot of input from pension practitioners. It includes the top tips to prepare for an efficient audit and a flowchart that takes you through the process. I also recommend checking out Exam Trends and Tips on the Web to find out the issues we've seen when examining specific plan types. This information also helps when conducting internal self audits.

For most audits we use a focused examination approach with three to five issues to examine based on analysis and industry type. After the initial focused review, an agent could conclude that the plan is compliant, resolve identified issues or expand the audit scope. Again, I would like to stress the importance of good internal controls and good preparation. Requested records should be organized, not stacked in boxes or piled all over the place. You need to be able to explain the terms of the plan, the operation of the plan and the administrative processes. Having the appropriate people available makes a lot of difference. Identify any plan errors that you fixed. If you solved something through a VCP, provide the Compliance Statement. If you used Self Correction, be able to show that you have practices and procedures in place to prevent the problem. You will need to verify what you did.

Remember, our goal is to keep qualified plans qualified. If a plan is intended as a legitimate retirement vehicle, as opposed to a tax evasion scheme, then we want to work with you to keep it qualified.

ADVERTISE WITH

ASPPA

AND REACH MORE THAN

6,000
POTENTIAL CLIENTS

Contact Dawn Bancroft, Director of Sales, 703.516.9300 ext 113 for details.



www.asppa.org

Put our
software solutions
to work for you.



 **ftwilliam**
c o m
Innovative Plan Documents & Government Forms

Your life just got easier.

Nick: Speaking of tax evasion schemes, please generally describe your program for addressing Abusive Tax Avoidance Transactions (ATATs). What are you looking for and how are you going about it, and what are you finding in terms of new/emerging abusive transactions?

Monika: It is no secret that the IRS is committed to detecting and deterring abusive schemes. In Employee Plans we continue to take a very strong stand against promoter schemes involving retirement plans. EP Exam is doing very meaningful and complex enforcement work, with very good results that positively impact compliance, deter promoter schemes and abuses and are clearly reflected in our success in detecting and deterring S Corporation ESOPs that violate IRC 409(p) and IRC 412(i) abusive plans that take deductions for excessive insurance. It is troubling that tax schemes are using retirement vehicles and in doing so are tainting and jeopardizing the private retirement system in America. Accordingly, we do not treat these abusive cases the way we normally treat

legitimate, qualified plans that make mistakes. As I previously said, we are committed to shutting down abusive schemes. If an abusive plan actually provides meaningful benefits for rank and file employees, we might eliminate the abuse and save the plan. However, we treat it very differently than plans that make honest mistakes. We continue to look for the next big scheme to stop it dead in its tracks.

In FY 2009 we will continue to develop strategies for identifying and addressing new schemes. New emerging issues continue to be identified from both internal and external sources. Some of the emerging issues that we are looking at include promoter schemes similar to 412(i) since these schemes tend to morph. We are also looking at an invalid collective bargaining (phony union) scheme involving employers who create a collective bargaining agreement for their employees and place their rank and file employees under the agreement and the employees may not even be aware of the collective bargaining agreement. As a result, the rank and file employees are excluded from participating in the employer's qualified plan. Another emerging issue involves setting up defined benefit (DB) plans and taking pension deductions for improper or excessive amounts. These plans do not file Forms 5500. We became aware of this scheme through referrals from SBSE and are working jointly with them to address this. We have identified another scheme where a management company is set up to divert taxable income from a profitable operating company. The management company is paid a significant fee from the operating

Have you completed your 40 hours for the current CE cycle?

2007-2008 CE cycle has been extended to March 31, 2009.

Report Online

Help ASPPA in its efforts to go green and save paper by reporting online. It's quick, easy and ASPPA conference attendance is automatically tracked.

There are plenty of CE opportunities here at ASPPA now through March 31, 2009.

For a complete list, go to www.asppa.org/asppace.



Knowledge • Advocacy • Credibility • Leadership

company and then sets up a generous DB plan to only benefit the owner. The rank and file employees of the operating company do not participate in the DB plan, even though they are part of a controlled group or an affiliated service group. An emerging issue known as ROBS (Rollover as Business Startups) has not been labeled abuse per se, but it is a concern. ROBS, also being marketed as ERSOP, are retirement plan arrangements that are designed to finance a business with a taxpayer's retirement account, while avoiding income taxes and penalties on plan distribution. Since depending on how it is done, the arrangement may or may not be problematic, we're handling them on a case by case basis to determine whether or not the plan has any qualification defects and/or issues. Personally, from a sociological point of view, the concept worries me, because most business fails in the first year. Putting all of your retirement savings into a business that could go "belly-up," particularly in times of economic downturn, is very risky, aside from any tax related concerns.

What can the retirement plan practitioner community do to assist EP in this effort? Work with the Service to promote voluntary compliance by stamping out abuses, reporting abuses, proactively working with us to find those abuses and to have a united front against them. It is important to warn your clients about them, including the draconian 6707A penalty for engaging in a Listed Transaction and failing to report it on Form 8886. CE&O will be refining and updating the abusive transaction information on the Retirement Plans Web page (www.irs.gov/ep) and the EP Intranet site on an ongoing basis. Share with us where we need to do more outreach and help to leverage our outreach efforts by proactively educating your clients. Working together, the public and private do everything in our power to preserve the integrity of the private retirement system in America. In light of the escalating promoter schemes, now, more than ever, we need a continued open dialog as we work together to stop abuse.

Nick: It's been more than a year now since the IRS published final regulations applicable to 403(b) arrangements. The regulations appear to advance the IRS' stated goal of making 403(b) arrangements more like 401(k) plans and, in so doing, introduce a number of new compliance issues into an arena that is, quite frankly, not very accustomed to operating pursuant to so many strict guidelines and the threat of government enforcement. What is EP Exam's plan for addressing 403(b) arrangements and what is anticipated by many to be fairly widespread and significant noncompliance?

Monika: That's a good question because we are hearing that there is a great deal of concern in the 403(b) community with the new rules applying to 403(b) plans. EP Rulings and Agreements is working on developing and implementing a 403(b) Pre-Approved Plan Program that is targeted for late spring of 2009 and there is going to be a lot of outreach in the 403(b) arena. With respect to the recently released treasury regulations requiring a written document as of 1/1/09 (actually 12/31/08), I understand that there is consternation and confusion, as well as concern about whether or not vendors will be ready and able to comply. One of the things that we are planning to do in EP Exam to help is to add an outreach component to the EPCU 403(b) Universal Availability Project to assist in clarifying the new rules. I think we will definitely need some proactive outreach. In the EP Examination function, we understand there is a learning curve. Although we will require plans to timely meet the written document requirement, we also understand we may not get perfection. As with any new requirements, we are not going to use a hammer on day one. We're going to be working to help get these plans into compliance. We will still hold them accountable for the rules that are already in place and must be adhered, such as universal availability, and we will work with them to get into compliance with the new requirements. I should also mention that the IRS is working on updating EPCRS to include Section 403(b) issues.

One Integrated Software System Meets All Your Needs

ASC offers a single, integrated platform handling all your retirement plan automation needs

- Recordkeeping & administration software for DC/401(k) & DB plans
- EGTRRA Plan Document System
- Industry leading Compliance Testing System
- 5500 forms package
- Web access for plan sponsors & their participants
- Daily Valuation (whether you outsource or perform on-site daily val)
- ERISA consulting & training



Contact ASC Today!

www.asc-net.com sales@asc-net.com (800) 950-2082 x295

Nick: What are the critical priorities for EP Examinations for FY 2009? Are they the same as in FY 2008?

Monika: Nick, as you know, for the IRS the new fiscal year began on October 1, 2008. Some of our new challenges include looking at compliance issues, including fee transparency, in 401(k) plans—our fastest growing market segment. As background, I should explain that EP Exams conducted a baseline study of 79 market segments and our findings indicate that 401(k) plans are the most noncompliant plan type in the EP universe. In FY 2009, we will conduct a 401(k) Questionnaire Compliance Study using the EPCU. We are also looking to the raising awareness in the government plan sector through a combination of education, outreach, guidance and compliance efforts to provide tax-qualified governmental plans with the tools, assistance and programs they need to comply with Tax Qualification Requirements, where the IRS has jurisdiction and looking at international

issues impacting retirement plans, including the possibility of abusive transactions in plans in the international area. The time has come to look at offshore activity and see if there are any problems. Of course, as we did in FY 2008, we will continue to address and deter Abusive Transactions by developing strategies for identifying and addressing new schemes (focusing on the next big scheme) with an increased emphasis on identifying potential civil or criminal fraud, where applicable. We will also continue to improve case selection methodologies to identify areas of non-compliant behavior and develop new examination projects. With an EP universe of more than one million plans, we must leverage resources to maximize our enforcement presence to promote compliance. I think it's going to be a challenging year for us.

Nick: Will you please tell us about the Enrolled Retirement Plan Agent (ERPA) Program and why you think it is important and how it will work?

Monika: Certainly. I had the privilege of serving as the ERPA Project executive champion and the first implementation coordinator when EP employee plans was charged with the responsibility of establishing the ERPA Program. So I was thrilled when, on September 26, 2007, Circular 230 was revised and established the Enrolled Retirement Plan Agent (ERPA) as a new classification of practitioner. ERPA is a result of a 2005 recommendation from the Advisory Committee on Tax Exempt and Government Entities, better known as the ACT, as a way to deal with the disenfranchised professionals who could no longer practice before the Service.

ASPPA participates in America Saves Week!



Take a Look:

www.asppa.org/americasavesweek

Remember, as a result of RRA'98, Power of Attorney Form 2848 was revised to exclude un-enrolled preparers. The idea was to mirror the requirements for an enrolled agent, including testing, background check and continuing education requirements. The difference is that for an ERPA, the scope of practice before the IRS is limited to retirement plan matters, other than actuarial matters. On August 5, 2008, the IRS awarded the American Institute of Retirement Education, LLC (AIRE) the contract to conduct the examination for the ERPA program under Circular 230. AIRE is a partnership between ASPPA and NIPA, working with Prometric and the University of Michigan, to administer and conduct the ERPA—Special Enrollment Examination program. The contract was the result of a competitive bid. The Form 2848 was revised to include the ERPA designation. The enrollment exam will consist of two parts with approximately 75 questions per part. Both parts must be passed before someone can be credentialed as an ERPA. The first enrollment exam window opened January 6, 2009. Candidates apply for enrollment through OPR and must undergo a background and a compliance check in order to become an ERPA. The ERPA practitioner's status will ensure professional and ethical standards, accountability and help level the playing field in the EP community. More information is available at www.erpaexam.org.


Nick: Monika, I want to thank you very much for participating in this interview and I want to close by asking you whether there is anything that you want to cover not previously covered during our conversation?

Monika: Thanks, Nick. Actually, there are two things I would like to add. First, in addition to the market segments we talked about, our EP Large Case Program called Employer Plan Team Audit (EPTA) is an important priority, and all five EP Areas have an EPTA Group. Although EPTA Plans (those with more than 2,500 participants) are only about 1% of the EP Universe, they have a huge impact because they cover 60% of plan participants and hold 70% of total plan assets. Large multiemployer plans and large 403(b)

plans are included in our EPTA Program. We are increasing our EPTA audits in FY 2009 and we are using a focused approach to increase coverage and reduce taxpayer burden.

My second point that I would like to close with is a warning about the coverage gap in America today. As a society we're getting older and less frugal—particularly alarming in light of the current economic factors impacting our nation. Although there are more than one million retirement plans covering more than 99 million participants, only 43% of private sector workers are covered by a plan and only about 60% of workers over age 40 who are eligible to participate in a 401(k) plan actually do so. Of those who do participate, the average account balance for someone 60 or older is \$141,000. This average balance will provide someone with a whopping \$12,000+ annuity that, even combined with social security, may not be enough to retire on. This problem is escalating because as a society, Americans are not filling the coverage gap with personal savings. Only 44% of families nearing retirement have an IRA with an average account balance of \$60,000. Savings are at a -1% compared to 1.3% in 2000–2006 (1/6 of the average since WWII). I really feel very passionate about the need for the public and private sector to work together to protect and preserve our retirement system so that Americans will be able to retire and enjoy their golden years.

Nick: Monika, again, thank you very much.

Monika: Thank you, pleasure talking to you,
Nick: 



Nicholas J. White is a partner in the law firm of Reish Luftman Reicher & Cohen, specializing in all aspects of employee benefits law. Before joining the firm, Nick worked for the IRS in the Employee Plans and Exempt Organizations Division (now

known as the Tax Exempt & Government Entities Division or TE/GE Division), where he served on the Technical Review Staff as a Senior Reviewer for both determination and examination cases, and as a technical resource for the Division. Nick is a frequent lecturer at employee benefits conferences. He is also the Contributing Editor of the Pension Plan Fix-it Handbook, published by Thompson Publishing Company in Washington, DC, for which he writes monthly articles.
(nickwhite@reish.com)

A Meditation on the Definition of Plan Assets

by Stephen J. Migausky and Marcia S. Wagner

The recent decision by the US District Court for the District of Connecticut in *Haddock v. Nationwide Financial Services* held that revenue sharing payments received by employee benefit plan service providers from mutual funds could be characterized as “plan assets” of those plans for purposes of ERISA’s fiduciary responsibility requirements.¹ However, the 2007 ERISA Advisory Council’s Working Group on Fiduciary Responsibilities and Revenue Sharing Practices (the “Council”) recommended that the Department of Labor (the “Department”) issue guidance clarifying that revenue sharing is not a plan asset under ERISA until credited to a plan, and senior Department officials appeared to take a view that was consistent with this position.²

The Council was concerned that the failure to issue regulations or provide clear guidance might well result in conflicting court decisions and inconsistent requirements for plan sponsors and service providers.

The Council’s call for guidance raises the question of how the Department might draw a line between revenue sharing payments and other property rights for purposes of clarifying the definition of plan assets. This article will review the Department’s prior guidance in the matter of defining plan assets, since it will likely be applied in developing any new rules. It will also discuss the rules that apply in allocating revenue sharing payments once they have been returned to a plan.

The Look-through Rule

Under the Department’s plan asset regulation, issued in 1986, plan assets include not only the interest (*e.g.*, a share or a unit) in certain closely held entities in which benefit plan investors have a significant interest but also the underlying assets of such entities.³ Referred to as the plan asset “look-through” rule, this regulation is of great concern to the managers of private equity funds for whom it is imperative that fund assets avoid characterization as plan assets subject to ERISA’s fiduciary requirements.



The Department’s regulation limits the applicability of the look-through rule to investments in entities that do not produce or sell a product or service or where the entity’s product or service relates to the investment of capital. Thus, entities whose underlying assets are not plan assets include (i) a registered security that is widely held and freely transferable,⁴ (ii) an equity interest in which “benefit plan investors” hold less than 25% of each class of equity interest,⁵ (iii) an operating company engaged in the production or sale of a product or service other than the investment of capital,⁶ (iv) a venture capital operating company (“VCOC”) that actively manages venture capital investments in accordance with the regulation,⁷ and (v) a real estate operating company (“REOC”) that actively manages and develops real estate in accordance with the regulation.⁸ In addition, statutory provisions provide that plan assets include only an entity level interest, and not the underlying assets, in the case of mutual fund shares⁹ or a guaranteed benefit policy issued by an insurance company.¹⁰

Participant Contributions

Department regulations provide that the contributions of participants to ERISA plans that are paid to or withheld by an employer become plan assets “as of the earliest date on which [they] can reasonably be segregated from the employer’s general assets.”¹¹ The outside time limit for contributing these amounts is 15 business days after the beginning of the month following the month in which such amounts would otherwise have been withheld or are payable to the participant in cash.¹² Because there are lingering questions as to the timeliness of deposits, on February 29, 2008, the Department proposed an amendment to the plan asset regulation that would establish a safe harbor period of seven business days during which amounts that a small employer has received from a participant or withheld from a participant’s wages would not constitute plan assets.¹³ As proposed, the safe harbor would be available for contributions to employee pension benefit plans

and to welfare plans, but only if the plan has fewer than 100 participants at the beginning of the plan year. According to the preamble to the proposed regulation, the Department is evaluating whether a similar safe harbor should be created for plans with 100 or more participants.

The Department’s position is that employer contributions become delinquent once they are due and owed to the plan under the documents and instruments governing the plan. Nevertheless, contributions generally become a plan asset only when the contribution has actually been made.¹⁴ A plan’s claim against the employer when that employer fails to make a required contribution is also a plan asset. DOL Field Assistance Bulletin 2008-1, released by the Department on February 1, 2008, concluded that a plan’s named fiduciary must assign the duty to collect delinquent contributions to a plan trustee with discretionary authority over plan assets, to a directed trustee subject to the named fiduciary’s direction, or to an investment manager. Failure to do so could subject the named fiduciary itself to liability for losses resulting from the failure to collect contributions. In the view of the Department, if a trustee is aware that contributions are going uncollected and that no party has assumed the responsibility to enforce the claims of the trust, the trustee retains such responsibility under its common law duties as a trustee.

The ERISA Outline Book 2008 Edition

by Sal L. Tripodi, J.D., LL.M.
A vital tool for success.

Recommended reading for ERPA Exam!

This five-volume resource will tell you what you need to know, including:

- Interim and discretionary amendment guidance, including guidelines for adopting PPA 2006 amendments.
- Final regulations on IRC §415 limits, 403(b) plans, QDIAs, Roth 401(k) and IRC §409A.
- Automatic enrollment guidance, including rules for qualified automatic contribution arrangements (QACAs) and eligible automatic contribution arrangements (EACAs).
- New rules under IRC §417(e), latest guidance on cash balance plans, PPA funding rules and on benefit restrictions under new IRC §436.
- Revisions to the Form 5500 series and the determination letter procedures.
- Information on hundreds of new cases, rulings and informal guidance from the courts, Treasury, IRS, DOL and PBGC.

2009 Edition available Spring ‘09!

Order **The ERISA Outline Book** today at
<http://store.asppa.org>

The question of entitlement to insurance company demutualization proceeds provides an interesting opportunity to examine how property interests are determined.

General Notions of Property Interests

Where property interests are not held in a plan trust, the Department has long indicated that the assets of an employee benefit plan are to be identified on the basis of ordinary notions of property rights under non-ERISA law.¹⁵ Generally speaking, this situation would require consideration of any contract or other legal document involving the plan, as well as the actions and representations of the parties. While a plan generally obtains a beneficial interest in particular property if the property is held in trust for the benefit of the plan or its participants, there have been situations involving welfare benefit plans (with respect to which assets funding benefits do not necessarily have to be held in trust) in which a clear expression of the plan sponsor's intent that no beneficial interest in favor of employees was intended has overcome the fact that assets were, in fact, held in trust.¹⁶ The Department has stated that the mere segregation of employer funds to facilitate administration of a plan would not, in itself, demonstrate an intent to create a beneficial interest in those assets on behalf of the plan.¹⁷

In the case of an insurance contract, if the plan or trust is the policyholder or if the premium is paid entirely out of trust assets, the Department assumes that any amount distributed with respect to the policy constitutes a plan asset. However, if the employer or another party is the named policyholder, additional evidence of the parties' intent (*e.g.*, whether it was intended that plan participants be considered the beneficiaries of the policy) would be needed to determine whether amounts generated by the policy should be allocated to the plan.¹⁸ The insurance contract itself and any other instruments governing the plan would be germane to this inquiry, as would the source of premium payments. If plan participants and the employer both pay a portion of the insurance premiums or other expenses, the Department has specified rules for allocating ownership of the policy and rights to any payments resulting therefrom based on the relative amount of premium payments from each source.¹⁹

The question of entitlement to insurance company demutualization proceeds provides an interesting opportunity to examine how property interests are determined. In DOL Advisory Opinion 2003-05A, the Department considered whether the participants and beneficiaries of a terminated defined benefit pension plan had any right to a demutualization dividend resulting from the guaranteed annuity contracts that had been purchased in order to satisfy the plan's benefit obligations. Upon receiving the demutualization dividend, the employer deposited it into a separate

account pending the Department's advice on whether it belonged to the employer or the plan. The Department, in essence, decided not to decide, because, in its view, the answer was outside the scope of ERISA. Thus, it stated:

"If, as you represent, the Plan was properly terminated [footnote omitted] and all obligations and claims under the Plan were satisfied prior to the termination annuity contract provider's demutualization, there is no obligation under Title I of ERISA to treat demutualization proceeds as plan assets. Therefore, no violation of Title I of ERISA would occur if [the employer] takes possession of the proceeds. The question of whether the employer or the beneficiaries of the termination annuity contract are the actual owners of the demutualization proceeds received by the employer as the named policyholder of the annuity is not within the jurisdiction of the Department of Labor under Title I of ERISA. Rather, this issue is governed by the terms of the contract and applicable state law."

While the fact that the plan had terminated allowed the Department to avoid a determination as to ownership, the task of examining the contract and applicable state law in such situations has been undertaken by the courts with a result that is more favorable for employees. Thus, in *Bank of New York v. Janowick*,²⁰ the court held that the demutualization proceeds paid by Prudential Insurance Company belonged to the participants in the terminated plan who were entitled to benefits under the annuity contracts that were purchased when the plan was terminated and that generated the additional insurance proceeds.

The split decision in the *Janowick* case was based on three separate rationales. The court's first rationale relied on the fact that under the annuity contracts, demutualization proceeds were to be paid to the contract holder which was the former trustee of the now defunct plan. Since the trustee had ceased to be the contract holder, the court thought it proper under relevant state law (in this case, the law of Kentucky) to consider the circumstances surrounding the parties and the object of the annuity contracts. Since the purpose of the contracts was to provide pension benefits, the court concluded that there was a strong indication that it was intended that the employees step into the shoes of the former trustee as the contract holder.

A second rationale for the *Janowick* court's decision that demutualization proceeds belonged

to the employees was based on a comment under Section 204 of the Restatement of Contracts that, when the parties have not agreed with respect to an essential contractual term, community standards of fairness are to be applied to supply a term that is reasonable in the circumstances. Since the plan that had been terminated was a defined benefit plan and the purchase of the annuity contracts had effectively shifted the plan's investment risk from the employer to the employees, the court determined that fairness required that the insertion of a missing term not result in a benefit to the party that had been absolved of the risk (*i.e.*, the successor to the plan sponsor).

Finally, the *Janowick* court held that neither the plan sponsor nor its successors could hold any claim to the demutualization proceeds because the demutualization process itself involved the conversion of a membership interest in Prudential prior to its conversion. This interest had never been purchased or held by the plan sponsor or its successors. Similarly, the terminated plan never acquired such an interest, because the interest in the old mutual insurance company was acquired only after, and as a result of, the termination of the plan.

In essence, the demutualization proceeds in *Janowick* were like gains realized from the investment of a plan distribution. Consequently, they were most naturally viewed as the property of employees. While the Department felt that it was under no obligation to determine rights to demutualization proceeds in DOL Advisory Opinion 2003-05A, it would presumably be guided by the reasoning of the *Janowick* decision in situations where property interests are acquired prior to plan termination.

Allocation of Revenue Sharing Payments

The Department has acknowledged that revenue sharing (*i.e.*, payments from mutual funds and their managers to plan providers) is a common practice in the 401(k) industry and has reduced the cost of 401(k) plans, making them more affordable, particularly for small and mid-sized employers. In their testimony before the Council, Department officials stated that there was no inherent violation of ERISA involving revenue sharing, although it was also noted that it would be a violation of ERISA's prohibition of self-dealing for a plan adviser to cause such payments to be made to itself, an affiliate or another interested party, unless the payment was transferred to the plan or used to offset the plan's obligation to the adviser.²¹

Upon their return to a plan, revenue sharing payments become plan assets, and, while this action will subject them to the full range of ERISA's fiduciary and prohibited transaction rules, according to the testimony of Department officials before the Council, there is

ERISA/Fidelity Bonds and Fiduciary Insurance

Simplified



It's never been easier to protect your clients – and yourself.

With just a click, purchase a Fidelity Bond to ensure DOL compliance and Fiduciary Liability Insurance for added protection for both you and your client. It's just that fast and easy when you go direct with Colonial Surety, the insurance company dedicated to providing Pension Fidelity Bonds and Fiduciary Liability Insurance.

For more information, visit www.colonialdirect.com or call 1-888-383-3313.



The Department is likely to issue guidance with respect to the allocation of revenue sharing rebates. However, it is not likely that it will characterize revenue sharing amounts as plan assets prior to their being credited to a plan.

no statutory guidance that would govern the allocation of such amounts among plan participants. However, the principles that will govern this issue and that will presumably underlie any future guidance from the Department are to be found in DOL Field Assistance Bulletin 2006-1, dealing with the allocation of mutual fund settlement proceeds to plans and plan participants, and DOL Field Assistance Bulletin 2003-3, which focuses on how expenses are allocated among plan participants in a defined contribution plan. As discussed below, plan provisions that allocate gains and losses in a manner consistent with such principles will also be critical.

According to the Department's testimony before the Council, there are three possible options for allocating revenue sharing amounts: (i) reduction of overall plan expenses; (ii) allocation among all participants on a pro-rata or per capita basis; and (iii) allocation to the particular participant and beneficiary accounts that generated the revenue sharing. These categories are analogous to the methods for allocating expenses among individual participant accounts described in DOL Field Assistance Bulletin 2003-3. That guidance indicated that, generally speaking, the pro-rata method (*i.e.*, allocations made on the basis of the assets in a participant's account) appeared to be the most equitable method of allocating expenses. However, nongovernmental witnesses before the Council indicated that as plan record keeping systems improve, the best practice will likely be to allocate rebates of revenue sharing amounts back to the participants' accounts that actually paid them.

As to the first option, plan sponsors must be aware of the prohibition on the use of plan assets to pay so-called settlor expenses, as elaborated in DOL Advisory Opinion 2001-01A. That opinion reconfirmed the Department's position that a wide range of expenses relating to plan formation and design, in contrast to plan management, cannot be paid with plan assets. It is to be noted that according to the testimony of Department officials cited above, the use of revenue sharing amounts is subject to fiduciary restrictions even before they become plan assets. Thus, it would appear that revenue sharing should not be used to offset settlor expenses, and that the practice of a plan provider that renders settlor services without charge (because it is compensated through revenue sharing) or that varies the charge for such services based on the amount of plan assets is highly suspect and apt to be challenged by the Department.

The touchstone is whether the allocation method is solely in the interest of plan participants.


Where allocation of revenue sharing amounts is to be made among plan participants, a plan fiduciary's selection and implementation of an allocation methodology must be made on a prudent basis and in accordance with the plan document.²² However, while an allocation method would optimally reflect the investments and transactional activity of a particular participant's account, prudence also requires a fiduciary to take into account the cost of an allocation method to the plan as a whole and to weigh the competing interests of various participants or classes of participants. In the absence of a controlling plan provision, it may be possible for a plan fiduciary to make a judgment that *de minimis* amounts should be used to pay the reasonable expenses of administering the plan rather than be allocated to participant accounts.²³

As to an allocation methodology that disproportionately affects one class of participants over another, the Department has indicated in the context of allocating plan expenses that such a method of allocation should have a "reasonable relationship" to the services furnished or available to an individual account.²⁴ From this position, it seems clear that it would be suspect from a fiduciary standpoint to allocate revenue sharing rebates only to certain plan accounts if all accounts have been charged on an equal basis for the expenses leading to such rebates. This situation would become even more problematic if the fiduciary that selects the allocation methodology is a plan participant whose account would receive a disproportionate benefit from the allocation of the rebate.²⁵ The Department does not view such arrangements as meeting the solely in the interest of participants standard.

While the allocation method selected must have a rational basis and be reasonable, fair and objective, the existing guidance also raises the possibility that incorporating the methodology into the plan document, thereby avoiding potential challenges to the exercise of fiduciary discretion, would be a legitimate technique.²⁶ However, there is a limit to how far this concept can be carried, since ERISA requires a plan fiduciary to disregard the provisions of the plan document when following the document would clearly be imprudent. Moreover, embedding the allocation methodology in the plan document may not be sufficient to resolve disputes with participants. For example, what would happen if a previously contingent rebate of a revenue sharing amount were credited to plan accounts in a year subsequent to the distribution of those accounts that generated the credit? Analogous case law suggests that, in such situations, the distributed accounts may have no right to share in the rebate.²⁷



Conclusion

The Department is likely to issue guidance with respect to the allocation of revenue sharing rebates. However, it is not likely that it will characterize revenue sharing amounts as plan assets prior to their being credited to a plan. Among the difficult issues that would arise in such event would be defining the term revenue sharing itself and identifying the time when such rebates become subject to ERISA's fiduciary rules. Nevertheless, many of the principles relating to property rights that have been used to identify plan assets may also be applied to interests in revenue sharing amounts. 



Stephen J. Migausky is an associate at The Wagner Law Group, where he specializes in employee benefits matters with particular emphasis on issues under Title I of ERISA. Prior to joining the firm, he was tax counsel for a large insurance organization where he also concentrated on employee benefits.

(smigausky@wagnerlawgroup.com)



Marcia S. Wagner, Esq., is a specialist in pension, employee benefits and executive compensation. She is recognized as an expert in a variety of employee benefits issues and executive compensation matters, including qualified and non-qualified retirement plans and welfare benefit arrangements. Marcia has practiced for 22 years, is a frequent lecturer and has authored a Bureau of National Affairs Tax Advisory Opinion 2005-08A, entitled Plan Disqualification and ERISA Litigation, for which she has received the BNA Distinguished Author Commendation. She has also authored, among other books and articles, the following: BNA Tax Management Portfolio: ERISA Litigation, Procedure, Preemption and Other Title I Issues, and BNA Tax Management Portfolio: EPCRS—Plan Correction and Disqualification. 401(k) Wire has listed her as one of the 100 most influential in the pension industry. Marcia is a member of the IRS Advisory Committee on Tax Exempt and Government Entities and was recently inducted as a Fellow of the American College of Employee Benefits Counsel. (marcia@wagnerlawgroup.com)

- ▲ ▲ ▲
- 1 419 F.Supp. 2d 156 (D.Conn.).
 - 2 Testifying before the Council, Louis Campagna, Chief of the Division of Fiduciary Interpretations, Office of Regulations and Interpretations, commented that, with one exception, there was no inherent violation of ERISA involving revenue sharing, and appeared to take the view that revenue sharing payments become plan assets only at the point when they are returned to the plan, at which time they will be subject to all of ERISA's fiduciary and prohibited transaction rules.
 - 3 ERISA Regulation §2510.3-101.
 - 4 ERISA Regulation §2510.3-101(a)(2) and (b)(2).
 - 5 ERISA Regulation §2510.3-101(a)(2)(ii) and (f). Under ERISA Regulation §2510.3-101(f)(2), the 25% test must be applied to each class of equity interests each time there is an acquisition of such an interest. For this purpose, a "benefit plan investor" is an ERISA-covered plan, an IRA or an entity that holds plan assets by reason of a plan's investment in the entity. By virtue of §611(f) of the Pension Protection Act of 2006, foreign, governmental and non-electing church plans are excluded from the definition of "benefit plan investor," and the interests in an entity held by such plans will not be counted toward the 25% test. The Pension Protection Act also eases how the look-through rule is applied by providing that an entity that is treated as holding plan assets is deemed to do so only in proportion to the equity held by the benefit plan investors. Thus, if 50% of the equity interest in a tier 1 fund is held by benefit plan investors, only 50% of the first tier fund's investment in a second tier fund must be counted as the investment of a benefit plan investor.
 - 6 ERISA Regulation §2510.3-101(a)(2)(i) and (c).
 - 7 ERISA Regulation §2510.3-101(a)(2)(i), (c) and (d).
 - 8 ERISA Regulation §2510.3-101(a)(2)(i), (c) and (e).
 - 9 ERISA §401(b)(1).
 - 10 ERISA §401(b)(2).
 - 11 ERISA Regulation §2510.3-102(a).
 - 12 ERISA Regulation §2510.3-102(b).
 - 13 Proposed amendment to ERISA Regulation §2510.3-102, *Federal Register*, Vol. 73, No. 41, February 29, 2008, at 11072.
 - 14 See DOL Field Assistance Bulletin 2008-1; see also DOL Advisory Opinion 1993-14A.
 - 15 See e.g., DOL Field Assistance Bulletin 2006-1, DOL Advisory Opinion 2005-08A, DOL Advisory Opinion 1994-31A and DOL Advisory Opinion 1992-24A.
 - 16 Compare DOL Advisory Opinion 1994-31A, in which the offsetting of liability for post-retirement medical costs with trust assets for financial reporting purposes was held to be a representation that such assets separately secure the promised benefits and, thus, were plan assets, with DOL Advisory Opinion 1999-08A, involving similar facts but in which the trust agreement explicitly stated that it was not the purpose of the trust to fund any employee benefits and all representations made by the plan sponsor affirmed this fact and that the trust assets could be used for any business purpose.
 - 17 DOL Advisory Opinion 1992-24A.
 - 18 In DOL Advisory Opinion 2005-08A, these principles were discussed in connection with a request by a Blue Cross and Blue Shield organization for guidance with respect to the distribution of surplus assets it had received from the settlement of claims for damages against the tobacco industry.
 - 19 See DOL Advisory Opinion 2005-08A and DOL Advisory Opinion 2001-02A.
 - 20 470 F.3d 264 (6th Cir. 2006), cert. denied 2007 WL 1825159.
 - 21 While the initial reaction by the Securities and Exchange Commission to proposals involving the waiver or rebating of certain revenue sharing amounts, such as 12b-1 fees, was negative, the Commission's staff subsequently acknowledged the possibility that rebates could be provided subject to the relevant facts and circumstances. See E*Trade Securities, LLC no-action letter, issued November 30, 2005. The staff explained that its intent in prior no-action letters had not been to prohibit all 12b-1 rebate programs, but to raise the concern that mutual fund boards should consider the existence of 12b-1 rebate programs when deciding whether a 12b-1 program should be adopted. While admitting the viability of rebate programs generally, the staff warned that if the mutual fund itself selectively rebates 12b-1 and/or administrative fees to shareholders in coordination with a broker-dealer, there could be a violation of certain provisions of the Investment Company Act, such as §18(f), making it unlawful to issue any class of senior security, §22(d), making it illegal to sell any security other than at a current public offering price described in the fund's prospectus, and §48(a), making it unlawful to perform an act through or by means of any other person which it would be unlawful to do under the provisions of the Investment Company Act.
 - 22 DOL Field Assistance Bulletin 2003-3; see also DOL Field Assistance Bulletin 2006-1.
 - 23 DOL Field Assistance Bulletin 2003-3.
 - 24 Id.
 - 25 Id.
 - 26 Id.
 - 27 See *Becker v. Midwest Stamping and Manufacturing Company Profit Sharing Plan and Trust Administrative Committee*, 2000 WL 924072 (6th Cir. 2000) in which former plan participants were held to have no rights in an escrow account consisting of a portion of sale proceeds where the escrow was established to cover potential liabilities of an employer that sponsored an ESOP in connection with the sale of the employer. The court was strongly influenced by a plan provision that treated the escrow as a plan asset only after escrowed funds had been distributed to the plan.

2008 Harry T. Eidson Founders Award

by Chris Robichaux

ASPPA honored both Karen A. Jordan, CPC, QPA, QKA, of Anchorage, AK, and Paul T. Shultz of New York, NY, with the 2008 Harry T. Eidson Founders Award at the ASPPA Annual Conference in Washington in October. Both honorees have served the retirement planning community for many years.

ASPPPA established the award in 1995 to honor the memory of its founder, Harry T. Eidson. His belief in the importance of a private pension system in the United States and in having an organization dedicated to preserving and enhancing such a system was the inspiration for the formation of ASPPA in 1966. Each year, ASPPA honors one or two individuals for contributing to this cause. Recipients are members of ASPPA or can be from outside of the membership.

Karen A. Jordan is president of Alaska Pension Services, Ltd., a pension consulting and administration firm, and since July this year, a wholly-owned subsidiary of National Investment Managers, Inc. She has been a pension business professional since 1972 and an ASPPA member since 1983. Karen was the first non-actuary ASPPA President during her 1997-1998 term. She also has served on the ASPPA Board of Directors and numerous committees. She chaired the committee that created the ASPPA Benefits Councils.


Karen holds the following ASPPA credentials: Certified Pension Consultant, Qualified Pension Administrator and Qualified 401(k) Administrator. She also earned a Bachelor of Science degree in Mathematics from Macalester College in Saint Paul, MN. She is a co-founder of the Anchorage ERISA Forum, is past president of the Anchorage Estate Planning Council and is a frequent speaker about retirement issues, particularly those that affect the financial security of women. Karen taught high school mathematics and worked at William M. Mercer, Inc. in Minneapolis before moving to Alaska. Her husband, mother and a number of other family members and friends joined her during the award luncheon.

Paul T. Shultz, a retired attorney, served from 2000 to 2005 as the director of the Employee Plans Rulings and Agreements section at the Internal Revenue Service (IRS). He was on the



Paul T. Shultz and Karen A. Jordan, CPC, QPA, QKA, display their awards.

speaker and writer circuit of the pension and retirement arena from 1977 until his retirement in 2005. Paul often gave as many as 40 presentations a year and did extensive writing about a wide range of retirement, pension and tax issues. Sought as an expert about the technical and administrative issues of employee retirement plans, Paul ensured that objective information was available to address the concerns and needs of IRS customers.

Paul served as legal counsel at a number of New York law firms and businesses following an education in classics at Princeton University and earning a Juris Doctorate degree with distinction at Cornell Law School in Ithaca, NY. His professional life included work with a number of bar associations, serving on a number of pension and employee benefits councils and writing articles and giving speeches for business interests, academia and government entities. An avid fly fisherman, Paul made his trip to Washington count by including a fishing trip while he was in the area. 



Chris Robichaux, ASPPA Director of Media Relations since November 2007, is a veteran Capitol Hill staffer and originally from Southwest Louisiana. He served as press secretary, legislative assistant and communications director for ten years for various members of the US House of Representatives, including service at the House Veterans' Affairs Committee under Chairman G. V. (Sonny) Montgomery. Chris then served in communications capacities in Fairfax County government and at associations for the past decade, including five and one-half years directing public affairs at the American Academy of Actuaries. (crobichaux@asppa.org)

GENERATION

SAVE THE DATE!

ASPPA Annual Conference

2009

The Gaylord National Resort & Convention Center | National Harbor, MD
November 1-4, 2009



GETTING READY FOR THE NEXT DECADE / GETTING READY FOR



GETTING READY FOR THE NEXT DECADE / GETTING READY FOR THE NEXT GENERATION

Thank You to All 2008 ASPPA Annual Conference

OFFICIAL MEDIA SPONSOR

Defined Contribution & Savings Plan Alert



During the Washington Update general session, Brian H. Graff, Esq., APM, ASPPA Executive Director/Chief Executive Officer, roasted outgoing ASPPA President Sal L. Tripodi, APM, by illustrating a voluminous collection of The ERISA Outline Book, which Sal authored.



Political consultants Republican Mary Matalin and James Carville entertained ASPPA Annual Conference with an update of the historic 2008 president.

SPONSORS

GOLD

ASC

ING

John Hancock Retirement Plan Services

Nationwide Financial

SunGard Relius

Transamerica

SILVER

DATAIR Employee Benefit Systems, Inc. / Retirement Planning Center

Lincoln Financial Group

Newkirk/McKay Hochman

Reish Luftman Reicher & Cohen

BRONZE

AutoRollovers

Dorsa Consulting

Great-West Retirement Services

Infodrive Group

MetLife®

NIVM

PenChecks, Inc.

Profund Systems, Inc.

The Hartford

TIAA-CREF Asset Management®

Wolters Kluwer Law & Business

Wystar Global Retirement Solutions

SUPPORTER SPONSORS

Payden/Kravitz Cash Balance Plan Fund

RetireHQ.com

State Street Retiree Services



Gold Sponsor ASC



Gold Sponsor ING



Gold Sponsor Nationwide Financial



Gold Sponsor SunGard Relius



The final general session offered Q&A opportunities with the Inter... Seated (left to right) are Craig P. Hoffman, APM; moderator, Ilene... and Martin L. Pippins and James E. Holland, both with...

401(k) ASP
AccuDraft, Inc.
AICPA
BCG Terminal Funding
Benefit Insights, Inc.
BenefitStreet
Berwyn Group, Inc.
BLAZE SSI Corporation
BNA
CEFEX
Colonial Surety Company
Conference of Consulting Actuaries (CCA)

DailyAccess Corporation
Dietrich & Associates, Inc.
Digiscribe
Envisage Information System
ExpertPlan
First Mercantile
ftwilliam.com
International Foundation of Employee Benefit Plans
InvestLink
IRS-TE/GE Employee Plans
Keane Retirement Services
Klein Decisions

Participants!

The Bridging the Gap reception offered ASPPA Annual Conference participants the opportunity to unwind and try their skills at games of chance.



and Democrat
Conference attendees
ential election.



rnal Revenue Service.
e H. Ferenczy, CPC;
h the IRS.



Did someone shout, "Mr. President"? Outgoing ASPPA President, Sal L. Tripodi, APM (left), and incoming ASPPA President, Stephen L. Dobrow, CPC, QPA, QKA, QPFC (right), pose for a photo op with Sen. McCain and Sen. Obama impersonators in the exhibit hall.



Gold Sponsor Transamerica



Gold Sponsor John Hancock Retirement Plan Services

SPEAKERS

- | | |
|--|--------------------------------------|
| Robert J. Architect | Robert L. Long, APM |
| Bruce L. Ashton, APM | G. Neff McGhie, III, MSPA |
| Richard A. Block, MSPA | James J. McKinney, IV, CPC, QPA, QKA |
| Kevin Boercker | Kathleen M. Meagher, APM |
| Mary Virginia Boggs, CPC, QPA, QKA, QPFC | Pamela C. Means, MSPA, QPA, QKA |
| Kerry M. Boyce, CPC, QPA | Judy A. Miller, MSPA |
| Alex M. Brucker, APM | Cheryl L. Morgan, CPC, QKA |
| Larry Burleson | Stephanie Napier, APM |
| G. Patrick Byrnes, MSPA | Joseph A. Nichols, MSPA |
| Michael E. Callahan, FSPA, CPC | Gwen S. O'Connell, CPC, QPA |
| Louis J. Campagna | Richard M. Perlin, CPC, QPA, QKA |
| Bradford P. Campbell | Martin L. Pippins |
| John A. Carnevale | Thomas E. Poje, CPC, QPA, QKA |
| Amy L. Cavanaugh, CPC, QPA, QKA | Adam C. Pozek, QKA, QPFC |
| Warren Cormier | Michael B. Preston, MSPA |
| Mark A. Davis, QPFC | Eric A. Raps |
| Lawrence Deutsch, MSPA | W. Thomas Reeder |
| Kevin J. Donovan, MSPA | C. Frederick Reish, APM |
| Lorraine Dorsa, MSPA | Robert M. Richter, APM |
| Eric C. Droblyen, CPC, QPA | Howard P. Rosenfeld, MSPA |
| David B. Farber, MSPA | Chris Rouse |
| Ilene H. Ferenczy, CPC | Martin Silfen |
| Andrew W. Ferguson | Sheldon H. Smith, APM |
| Thomas J. Finnegan, MSPA, CPC, QPA | Vincent K. Snowbarger |
| Brian H. Graff, Esq., APM | Michael W. Spaid, MSPA, QPA |
| Joan A. Gucciardi, MSPA, CPC | Lawrence C. Starr, CPC, QPFC |
| Ronald E. Hagan | Chris L. Stroud, MSPA |
| John D. Hartness, Jr., APM | Caroline Sullivan |
| Richard A. Hochman, APM | Virginia Krieger Sutton, QKA |
| Craig P. Hoffman, APM | Peter K. Swisher, CPC, QPA |
| James E. Holland, Jr. | Kim L. Szatkowski, CPC, QPA, QKA |
| Karen A. Jordan, CPC, QPA, QKA | Monika A. Templeman |
| Michael Julianelle | Hal S. Tepfer, MSPA |
| Robert M. Kaplan, CPC, QPA | Sal L. Tripodi, APM |
| Danea Kehoe | S. Derrin Watson, APM |
| Kathryn J. Kennedy | Janice M. Wegesin, CPC, QPA |
| Charles J. Klose, FSPA, CPC | Harlan Weller |
| Yannis P. Koumantaros, QKA | David H. Williams, Sr. |
| Norman Levinrad, FSPA, CPC | Andrew E. Zuckerman |
| Barry Max Levy, QKA | |
| Deborah K. Lohning | |

Lynchval Systems Worldwide, Inc.
MassMutual
Matrix Settlement & Clearing Services
Millennium Trust Company, LLC
National Registry of Unclaimed Benefits
NexusTPA
NIPA
OneAmerica, AUL Retirement Services
Optimal Office Solutions
PBGC

Pen-Cal
PIMCO
Principal Financial Group
Professional Capital Services
TD Ameritrade
The Bancorp Bank
Thompson Hine, LLP
Trust Builders, Inc. (TRAK Software)
vWise, Inc.




2008 Educator's Award Presented to Thomas J. Finnegan, MSPA, CPC, QPA

Thomas J. Finnegan, MSPA, CPC, QPA, received the prestigious Educator's Award for 2008 at the ASPPA Annual Conference in Washington, DC in October. Tom was selected by the ASPPA Board of Directors and the Education and Examination Committee's Chairs and Vice Chairs in honor and recognition of his superior and dedicated commitment to education. The award recognizes and honors an ASPPA member who has made a significant contribution to the pension education field.

Tom is principal of The Savitz Organization, in Philadelphia, PA, and is an actuary with more than 20 years of experience working with qualified and non-qualified retirement plans. Prior to joining Savitz, he served as a senior actuary for a major employee benefits consulting firm, and the director of retirement plan services for a mid-sized regional consulting firm.

A member of the ASPPA Board of Directors, Tom serves as the Chair of the Defined Benefit Subcommittee of the ASPPA Government Affairs Committee. In addition to his activities with ASPPA, he is a fellow of the Conference of Consulting Actuaries and a member of the American Academy of Actuaries. Tom taught both semester-long Enrolled Actuary examination preparatory classes at Temple University, and ASPPA exam courses. A frequent speaker at regional and national benefit and actuarial conferences, Tom has written articles for national actuarial publications and regional newsletters. Tom will also serve as one of two special Directors from ASPPA on the board of the American Academy of Actuaries in Washington.

Congratulations to Tom! 



Thomas J. Finnegan, MSPA, CPC, QPA (left), accepts the 2008 Educator's Award from Robert L. Long, APM, at the ASPPA Annual Conference.

ASPPA Spring Examination Window

May 14 - June 26, 2009

Register Now!

For additional information and to register visit www.asppa.org/springexams09.

Don't miss out on the early registration discounts available through **April 17, 2009**.

2008 Martin Rosenberg Academic Achievement Awards

The Martin Rosenberg Academic Achievement Award honors its namesake, the late Martin Rosenberg, a fellow of ASPPA. Rosenberg served as an Education and Examination Committee member from 1979 to 1985 and its general chairperson from 1985 until his death in 1987. The award annually recognizes top performing ASPPA examination candidates.

A SPPA recognized each recipient of the Martin Rosenberg Academic Achievement Award for 2008 with a plaque during the ASPPA Annual Conference luncheon. The 2008 awardees follow:

Jacob Dumke, of Green Bay, WI, is the recipient for the fall 2007 Defined Contribution Administrative Issues—Compliance Issues (DC-2) examination. He is a plan administrator for defined contribution plans with Pension Consultants Co., Inc. He currently is pursuing his Qualified Pension Administrator (QPA) credential with ASPPA.


Kevin E. Boercker, of Tallahassee, FL, is the recipient for the spring 2008 Defined Contribution Administrative Issues—Advanced Topics (DC-3) examination. He is a consultant at Spectrum Pension Consultants, Inc., specializing in qualified plan design and implementation.

Laura S. Guin, CPC, QPA, QKA, of Brentwood, TN, is the recipient for the spring 2008 Financial and Fiduciary Aspects of Qualified Plans (C-3) examination. She leads research initiatives, such as the BPS&M annual plan sponsor survey and the Wells Fargo Total Plan Index annual benchmarking study.



*2008 Martin Rosenberg Academic Achievement Award winners:
Laura S. Guin, CPC, QPA, QKA; Jacob Dumke; Kevin E. Boercker and Melissa Bunk, QKA.*

Melissa Bunk, QKA, of Johnstown, PA, is the recipient for the spring 2008 Defined Contribution Administrative Issues—Compliance Issues (DC-2) examination. She currently serves as an assistant vice president and client services officer for First National Trust Company. She recently earned the Qualified 401(k) Administrator (QKA) credential with ASPPA.

Congratulations to all! 

What is Asset Protection Anyway?

by Jonathan S. Frank

With an uncertain economy, high net worth individuals are reconsidering “preventative” measures that protect assets from potential creditors. An adviser to high net worth clients will need to consider both traditional and non-traditional asset protection strategies. These strategies include the use of traditional business and estate planning tools, such as family limited liability companies, family limited partnerships and domestic trusts as well as non-traditional methods of asset protection such as US compliant offshore business structures and asset protection trusts.

This article will briefly explore the benefits and features of both traditional and non-traditional asset protection strategies to determine which approach may find favor with the client. (Discussion of detailed tax consequences and state-by-state fraudulent transfer laws is beyond the scope of this article.) There, of course, is no strategy that is ideal for every client. Instead, an adviser must consider customizing the approach to each client situation. Creditors and plaintiff’s attorneys have become increasingly successful in piercing traditional strategies to access assets. Therefore, to ignore offshore strategies in light of an intelligent and tenacious plaintiff bar is to accept a higher level of risk that can be minimized by using offshore vehicles, especially asset protection trusts.

Asset protection planning, when done correctly, must be legal and ethical. Any effort to conceal assets with the intent to evade US taxes is contradictory to sound asset protection strategies. Asset protection, simply put, is the method by which you structure the ownership of your assets to safeguard them from potential future risks. Keep in mind, there are no legal asset protection strategies that are 100% bullet proof. Instead, the success of your asset protection strategy is its ability to make your assets very difficult and expensive to reach. By increasing the time and cost of reaching your assets, most US based creditors or plaintiffs will settle literally for pennies on the dollar. Strategies may include encumbering assets (more specifically real estate), converting assets from



non-exempt to exempt, substituting assets or transferring ownership to legal entities and establishing trusts. Generally, these arrangements mean that you, debtor, can enjoy and maintain some degree of control over the assets without directly owning any asset.

Trusts: an Overview

Trusts are widely used in asset protection. Not all types of trusts are effective asset protection devices, but a properly drafted and structured trust may be an almost bullet-proof form of asset protection.

Revocable Living Trust

The most commonly drafted trust is the revocable living trust. A living trust, with appropriate spendthrift language, can protect its beneficiaries from creditors’ claims. The same cannot be said of the grantor-beneficiary. Because of the revocability power the grantor retains, the living revocable trust will not provide the grantor-debtor with any degree of asset protection. Thus, any trust created to protect the assets of a grantor must be irrevocable whereby

the grantor has effectively given up his or her right to change the trust. Such a trust must be established and funded, generally speaking, before the onset of any lawsuit against the client. Every state has a fraudulent conveyance statute. If the grantor-debtor makes a transfer for less than adequate consideration within two to four years (the exact period is state dependent) of the beginning of a law suit, the grantor has the burden of proof and he or she must prove that the transfer was for some other reason than to defraud creditors.

Spendthrift Trust

The spendthrift trust limits or prevents a beneficiary from being able to transfer or assign his or her interest in the income or the principal of the trust. Spendthrift trusts are typically used to provide for beneficiaries who are unable to take care of their own financial affairs. Today, almost every trust incorporates a spendthrift clause. If a trust incorporates a spendthrift clause, the beneficiary is prevented from transferring or assigning his or her interest in either income or principal, and the beneficiary's creditors will not be able to reach the beneficiary's interest in the trust.

The protection of the spendthrift trust extends solely to the property that is in the trust. Logically, if property has been distributed to the beneficiary then such property can be reached by a creditor. The distributed assets are treated as any other assets of the beneficiary-debtor, and there is no statutory protection available for such assets simply because the assets were previously held in a trust.

The trustee holds title to the trust assets for the benefit of the beneficiary. It is the duty of the trustee to administer the trust for the benefit of the beneficiary and no one else. A creditor's ability to satisfy a judgment against a beneficiary's interest in a trust is limited to the beneficiary's interest in such trust. Consequently, the common goal of asset protection trusts is to limit the interests of beneficiaries in such a way so as to preclude creditors from collecting against trust assets.

"Self-settled" Trust

An exception to spendthrift trusts are what are called "self-settled" trusts. If the grantor of a trust is also a beneficiary of a trust, the assets will not be protected by the trust's spendthrift clause from creditor claims where the grantor retained a benefit in the asset. If the trustee of a self-settled trust has any discretion in making distributions, then the creditors of the grantor will reach the maximum amount that the trustee may distribute in his or her discretion to the grantor-beneficiary.

Most jurisdictions remove the trust's spendthrift protection clause when it is self-settled, although a number of jurisdictions no longer follow this rule. These jurisdictions include certain US states, like Delaware, Alaska and Nevada, and certain foreign nations, like Nevis and the Cook Islands (these domestic and foreign asset protection trusts will be discussed in more detail). Forming an irrevocable trust in one of these jurisdictions may be another way to preserve the protection of the spendthrift clause inside a self-settled trust. Most asset protection clients are

Knowledge • Advocacy • Credibility • Leadership

2009 GREAT LAKES BENEFITS CONFERENCE

THE RITZ-CARLTON CHICAGO, CHICAGO, IL

APRIL 20-21, 2009



Register online, visit www.asppa.org/greatlakes.

A properly drafted discretionary trust is an almost impregnable form of asset protection.

looking to protect their own assets and are usually not beneficiaries of existing trusts. Consequently, the majority of asset protection trusts are self-settled. When a trust is self-settled, to obtain any asset protection for the grantor, discretionary powers should be avoided in favor of a clearly ascertainable standard.

Discretionary Trust

A trust is called “discretionary” when the trustee has discretion (as to the timing, amount and the identity of the beneficiary) in making distributions. Because the trustee is not required to make any distribution to any specific beneficiary, or may choose when and how much to distribute, a beneficiary of a discretionary trust may have such a tenuous interest in the trust so as not to constitute a property right at all. If the beneficiary has no property right, there is nothing for a creditor to pursue. The statutes follow this line of reasoning by providing that a trustee cannot be compelled to pay a beneficiary’s creditor if the trustee has discretion in making distributions of income and principal.

Even if a trust is truly discretionary, it should have a spendthrift clause. While the trustee would not need to honor a beneficiary’s demand for a distribution, it is possible that absent the spendthrift clause a creditor would force the beneficiary to assign his or her interest in the trust to the creditor. Should that happen, then any future distribution made by the trustee will be made to the creditor. To protect trust assets, it is important to have the protection of a spendthrift clause especially since few, if any, trusts are fully discretionary.

A properly drafted discretionary trust is an almost impregnable form of asset protection.

But if the trust is discretionary, it means that there are no mandated distributions and no demand rights granted to the beneficiary. This situation potentially leaves the beneficiary at the mercy of the trustee. Trustees must always exercise their discretion reasonably, and even if the trustee is granted “sole and absolute” discretion, the discretion must not be exercised “arbitrarily” and must be exercised in accordance with fiduciary principles.

It is also advisable to set forth in the trust the grantor’s intent for the trust. The intent can be stated in terms of providing for and taking care of the beneficiary, and not paying any monies to any party other than the beneficiary, including the beneficiary’s creditors.

Domestic Asset Protection Trust (DAPT)

A number of US jurisdictions now allow self-settled trusts to afford their grantors the protection of the spendthrift clause. Alaska was the first jurisdiction to enact such laws in 1997 and was shortly followed by Delaware, Nevada and a few others. These domestic self-settled asset protection trusts shall be referred to as “DAPTs.”

A typical DAPT must comply with the following requirements:

- the trust must be irrevocable and contain spendthrift language;
- at least one resident trustee (of the state having appropriate asset protection statutes) must be appointed;
- some administration of the trust must be conducted within that state; and
- the grantor cannot act as a trustee.

At first blush, the DAPT jurisdictions appear to be a simple solution for a grantor of a self-settled trust seeking asset protection if the grantor is a resident of a DAPT jurisdiction and has assets in the jurisdiction.

DAPT Risks: Conflict of State Laws

Trusts are generally governed by the laws of the jurisdiction that is designated by the grantor as the governing jurisdiction. There are two exceptions to the general rule:

- states will not recognize laws of sister states that violate their own public policy, and
- if the trust owns real property, such property will be governed by the law of jurisdiction wherein it is located.

Overcoming the latter is remedied to some extent by first establishing a family limited liability company or a family limited partnership (organized under the laws of the DAPT jurisdiction) and transferring the real estate into the company. This converts the real property into personal property. The second step is to re-title the new company in the name of the DAPT.

It is important to note that, to date, there are no cases dealing with the effectiveness of DAPTs.

DAPT Risks: United States Constitution, The Full Faith and Credit Clause

The Full Faith and Credit clause of the United States Constitution provides that each state has to give full faith and credit to the laws of every other state. Further, even under the Full Faith and Credit clause the states are not required to recognize the laws of sister states that are contrary to their own public policy.



Until such time as the application of the Full Faith and Credit clause is litigated in the context of a self-settled trust, it is the author's belief that the risk is too great that a DAPT would not afford the debtor with the required protection.

Foreign Asset Protection Trust

The term "foreign trust" usually means a trust that states that it should be interpreted under the laws of a foreign jurisdiction, which means that the laws of the foreign jurisdiction will apply to the trust and the enforceability of the trust's spendthrift clause. What advantages does that carry?


All foreign jurisdictions that compete in the asset protection market allow self-settled trusts to be an effective shield against creditors, similar to the US DAPT jurisdictions that have followed suit. However, foreign trusts are not subject to the Full Faith and Credit clause of the US Constitution. With a foreign trust there is never any doubt that the favorable law of the foreign jurisdiction will be applied to the trust, and there is also no doubt that the foreign jurisdiction does not have to enforce any judgment coming out of a US state (whereas a sister state may have to recognize such a judgment).

Even setting aside these uncertainties with DAPTs discussed above, foreign trusts are vastly superior to the US domestic trusts. For example, the foreign asset protection jurisdictions provide that the creditor has the burden of proving a fraudulent conveyance. More importantly, the creditor's burden of proof is the higher criminal standard of "beyond a reasonable doubt." In foreign jurisdictions the statute of limitations on bringing a fraudulent conveyance action is not only short, but it also begins running on the date of the transfer, not the date the transfer is "discovered."

In addition, few US attorneys are licensed in the foreign jurisdiction where the trustee resides which means the creditor will have to find an attorney licensed to practice in that foreign jurisdiction to represent his or her claim. With significant retainers often demanded by foreign attorneys before accepting a case, US attorneys often recommend a negotiated settlement for pennies on the dollar. Furthermore, the foreign asset protection trust becomes quite a disincentive for US attorneys seeking contingency fees making it very expensive for creditors to pursue reimbursement. This expense, while not a legal deterrent, becomes an insurmountable obstacle to most creditors.

Conclusion

As our fragile economy struggles to reassert itself, the wealth of millions of baby boomers hangs in the balance. Most of this wealth is held in residential homes and securities, which represent \$16 trillion in assets. This accumulated wealth is subject to creditors' or plaintiff attorneys' attack. As a result, asset protection strategies become a fertile field of discussion between the client and the adviser who strives to add value to client relationships. For the adviser who is not familiar with either traditional and/or non-traditional asset protection strategies, it is best to develop a relationship with an attorney familiar with such matters to navigate a course of action that achieves the asset protection objectives of the client. By collaborating with legal counsel familiar with the peculiarities of asset protection strategies, including offshore planning opportunities, an adviser secures the client relationship.

Of course, as stated earlier, offshore asset protection trusts represent one strategy that is legally sound and that should be explored. Such trusts do not prevent any investment from residing state-side nor do they protect those assets from most taxable consequences; however, there are some favorable offshore techniques that permit tax deferral, not tax avoidance. The bottom line: there are sound traditional and non-traditional asset protection strategies that advisers should explore in collaboration with legal counsel that can assist the adviser in structuring a sound asset protection strategy. 

As our fragile economy struggles to reassert itself, the wealth of millions of baby boomers hangs in the balance.



Jonathan S. Frank has his own practice, The Law Office of Jonathan S. Frank, P.C., in Charlotte, NC. Jonathan's practice concentrates in comprehensive estate planning and estate administration, wealth preservation, elder law and asset protection. Typical clients range from closely-held business owners and executives to wealthy retirees. During Jonathan's 30-year law career, he has also held positions as a trust officer/vice president for a major Chicago bank and as estate planning counsel for major insurance companies. He resides and practices in Charlotte, NC. He is a member of the Charlotte Estate Planning Council, the Estate Planning and Fiduciary Law Section and Elder Law Committee of the North Carolina State Bar, the Real Property and Probate Section of the American Bar Association and Wealthcounsel, a national consortium of estate planning and tax attorneys. Jonathan is a North Carolina State Bar – Board Certified Specialist in Estate Planning and Probate. (franklegal@gmail.com)

Getting Plan Sponsors to Zero: A Business Owner's View of 401(k) Operations

by Rich Budke

I owned a business for 25 years. We made saw blades. Today, I own a financial services firm serving privately held businesses, and our goal is to improve and simplify areas that burden business owners. A key focus for us is providing advisory services to 401(k) plans with a stated goal, to all involved, of helping achieve 90% participation, 80% of all employees on track to have enough money at retirement, and helping plan sponsors move administration time and cost as close to zero as possible. 90-80-0.

Most 401(k) sponsors are aware they are not administering their plans correctly. They are aware they have some personal liability as trustees, but are typically not aware of the exact nature or extent of it. They wish more of their employees were participating but don't know how to improve participation. They sense, with concern, that few of their people are putting enough money away for their retirement years.

Many of these plan sponsors need help that they are not currently getting. If asked, they aren't sure what they need and aren't sure what type of help to request. Checklists of things they are supposed to do are not helpful or of interest to them. They simply want someone to take care of their plans and their employees' retirement savings strategies so that they can focus on running their businesses.

The purpose of this article is to pinpoint some trouble spots I see as a 401(k) advisor and how the industry—myself, my fellow advisors and the product vendors—can help minimize the burden for employers while improving the plan for employees. For many business owners, the 401(k) plan is something they want to offer to their employees but it is not integral to their business success or personal retirement success. It is a cost center, not a profit center, and a source of distraction as often as not.

I believe in saving and always encouraged my employees to take advantage of the plan when I had my former business, but as a rule the employees got little help. As an employer, no one ever told me about my fiduciary responsibilities,



the nuances of plan administration, and how I alone was responsible for administering the plan in accordance with the document—or many other things that would have scared or annoyed me had I known about them.

As 401(k) advisors, I believe it is our duty to have the following perspective: first, how can we make the participants successful? Second, how can we make it easy for the sponsor? Finally, how can we protect the sponsor?

Problem Areas

Plan sponsors struggle most in the following areas:

- The new hire and enrollment process;
- Payroll, including census;
- Administering automatic escalators of savings; and
- Getting maximum participation and sufficiently high deferrals.

My firm has been strongly committed to plan designs that include automatic enrollment and automatic escalators of savings since before the Pension Protection Act of 2006, and as a result, virtually all of our plans include those features. Since adopting these simple solutions, plan participation is averaging more than 85%. Our goal is 90% participation in all plans we advise.

The New Hire Process

Hiring new employees is a lot of work for a company and 401(k) compliance complicates it further. The typical employer wants to hand the new employee a stack of forms to complete and be done with it. In reality it's not so simple.

Administering a new hire process in a qualified plan involves a number of steps—from determining eligibility, entry dates, distributing notices, distributing and explaining enrollment materials, payroll details, entering 401(k) vendor input and double-checking to make sure no one is overlooked. Getting it right is generally only possible if someone is actively involved in the details on a regular basis, such as by checking data from both payroll and the TPA, assembling new hire packets or handling stragglers. The reason plan sponsors struggle in this area is precisely because of the need for active involvement in the details, which is what sponsors hope to avoid. They want someone else to handle details for them.

Perhaps the most important step is ensuring the new employee makes good choices about participation, savings rate and investments. The industry has historically viewed this purely as a function of free will, but this approach is arguably too complacent; a more productive view is that the plan can and should be structured in such a way that the right employee behaviors become the most likely choice. Good choices become even more likely when participants see a professional advisor as part of the process. When you combine an “autopilot” plan design with personal access to an advisor for every participant, you get the best outcomes.

There are two key burdens in the new hire process:

- The need for a process supervisor who is involved in the details (a job the sponsor does not want and the typical provider will not or cannot accept); and
- The need for a high level of involvement by a professional advisor at the right times and places.

In other words, the new hire process is labor-intensive, and our industry doesn't do labor-intensive. We do automated, streamlined and computerized—not labor-intensive. Supplying the labor is the cure. Getting plan sponsors to zero with respect to new hires therefore involves the following solutions:

- Supply the labor: involve yourself in the details of coordinating between TPA, vendor, payroll, sponsor and participant.
- Supply the participant service: show up on a pre-determined schedule that is sufficient to get the job done.
- Structure the plan for success: embrace the “autopilot” approach wherever it fits, which is most companies.

Payroll

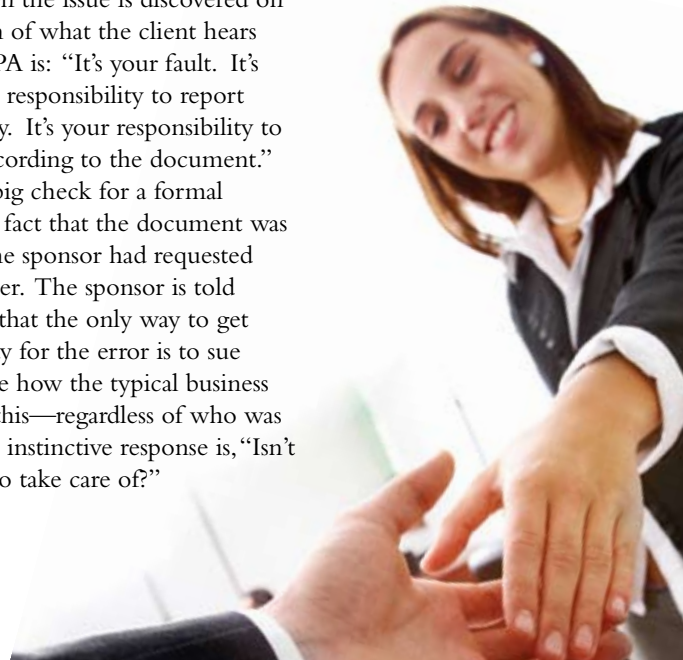
Example 1: Conversion

Administering payroll in conjunction with a 401(k) can have many pitfalls. Someone in the process, probably the advisor, needs to help the plan sponsor address issues such as, “How do I ensure I report the right compensation amount? What's included and what's not? Should I report all new hires to you or just new participants? What are the consequences of getting things wrong? How do I administer auto-enrollment? How do I implement the annual auto-escalators of savings?” In my firm's experience, the TPA or advisor rarely volunteers proactively that these things are important and holds a class on how to handle them. Instead, the client must know what to ask, and naturally no client ever does. Many problems could probably be avoided with a better conversion process.

Example 2: Bonuses Not Included

A car dealer has a plan in which compensation for its salespeople does not include bonuses for purposes of determining the company match, which is the only form of employer contribution. Unfortunately, this definition of compensation is not what the plan document says, but is nonetheless the way the sponsor has administered its plan for years. When the issue is discovered on audit, the short version of what the client hears from its advisor and TPA is: “It's your fault. It's not our fault. It's your responsibility to report compensation correctly. It's your responsibility to administer the plan according to the document.” The sponsor writes a big check for a formal correction, despite the fact that the document was not worded the way the sponsor had requested it from the recordkeeper. The sponsor is told by his or her attorney that the only way to get the recordkeeper to pay for the error is to sue them. You can imagine how the typical business owner might react to this—regardless of who was technically at fault, the instinctive response is, “Isn't this what I hired you to take care of?”

As 401(k) advisors, I believe it is our duty to have the following perspective: first, how can we make the participants successful? Second, how can we make it easy for the sponsor? Finally, how can we protect the sponsor?



Knowing that business owners are not interested in becoming 401(k) experts, that they prefer and are smart to hire experts to do it for them, there is a great business opportunity for providers and advisors who are willing to help their clients “get to zero.”

Example 3: Census

Clients often dislike completing the annual census. But in today’s 401(k), the census should be updated with every single payroll in order for the administration to flow as smoothly as possible. Regular updates depend on technology—if the vendor makes it easy it can get done, otherwise not. In the ideal 401(k) of the future, updates of the census will be automatic with every payroll; in the meantime, plan sponsors would benefit by searching out payroll processors who offer this service.

If we look across the three payroll examples above, we see again the same pattern that occurs with the new hire process: the solution, to a large extent, is labor and attention to detail, which is exactly what sponsors want to avoid.

Getting a client to zero when it comes to payroll, therefore, involves these factors:

- **Competence:** The advisor must understand the nuances of payroll and its importance in compliant administration. The advisor needs special expertise.
- **Labor:** Someone needs to do the work. Getting payroll right crosses company lines, so to speak—it involves TPA, recordkeeper, payroll provider and sponsor. Since no single provider will do the overall coordination, that coordination is left to the sponsor. This is the labor that an advisor or TPA can supply, at least in part.
- **Process:** Having a sound process that one executes consistently for every client, such as payroll training for new clients and contacts, or a protocol whereby clients understand the full census must be updated every pay period.

Implementing Auto-enrollment and Auto-escalators of Savings

The auto-401(k) concept has it right: do the right things for participants automatically unless they opt out. Success rates soar with this approach, and I question any fiduciary’s decision not to implement these provisions with few exceptions. But administering an auto-k is more difficult, not easier, and sponsors struggle to get it right. The more difficult areas include:

- Ensuring you don’t miss anyone (*i.e.*, if you have an employee whom you fail to auto-enroll, the penalty can be substantial);
- Tracking deferral rates and changes in deferral rates so you know what changes to make when the time comes;
- Tracking the auto-escalation percentage and any elected changes to the percentage;
- Getting the changes entered on time and without error in the payroll system; and
- Making sure the appropriate notices have been given.

Most payroll providers now have features that automate the auto-escalation of savings if you simply know to ask the right questions. Most recordkeepers assist with the new notice requirements. But because the penalties for error can be significant, this area is one where sponsors can use help. Our experience has been that even the big payroll providers have kinks in their systems, and it takes careful intervention from the advisor to ensure the sponsor knows what to do and how to integrate with the payroll process.

Again, therefore, the pattern repeats itself: clients need someone to do specific work which requires special expertise. They don’t want to and are not capable of doing the work themselves, so they turn to the plan providers. But since most providers stick to their corner of the puzzle, the effort succeeds or fails based on the business model of the advisor.

Getting to Zero

In each of the problem areas named above—new hire process, payroll and auto-enroll/escalators—we see these common themes:

These functions are a burden for the following reasons:

- Doing it right requires expertise.
- Doing it right requires effort and attention to detail.
- Doing it right requires someone to coordinate between the various providers and other parties.



The solutions can be simply described as a combination of:

- Expertise;
- Effort. Supply the labor; and
- Plan and process design: details of auto-k, service routine, etc.

Since clients can't and won't supply the expertise, labor or attention to detail that is necessary, one of the providers must. In reality, if it's going to be anyone it's going to be the advisor.

By any measure, the service model implied here is high touch. My firm's approach to supplying both the expertise and the labor is to find great, like-minded vendors who can join us to make a good team, share the expertise and labor through active coordination, and pull as much of that burden off the sponsor as humanly possible.

So in a typical plan, we might join with our partners to follow these steps:

- Plan design—strong counseling effort to lead the client to the right configuration of auto-401(k), eligibility and entry.
- Service intervals—generally quarterly or semi-annually with separate processes for new clients (full enrollment) vs. new participants.
- Participant one-on-one—most of our clients pay for this service and we've found it very effective.
- Payroll protocols—written guidelines for training new payroll contacts, the conversion process, census update with every payroll and details of implementation with various payroll providers.
- Protocols for implementing auto-enroll and auto-escalators, including getting specific census data and double-checking to ensure no one is missed.


In a perfect world, my firm or one of our partners would do all of these things, and more. The outcome would be predictable: smoother new hire processes with fewer errors; better choices by participants; more compliant administration of anything associated with payroll and compensation; and a plan sponsor who is as close to zero effort as we can get him.

“Getting to zero” involves a committed advisor who provides all of the following:

- Expertise—on the details of coordination and implementation at the sponsor and participant level.
- Effort—to show up in accordance with a service schedule, determined based on the plan's and sponsor's schedules.
- Coordination—between service providers, such as between TPA, sponsor and payroll providers.
- Process—written guidelines for helping clients with common trouble areas, such as payroll.

The Business Opportunity

When I ran my prior business for 25 years, I never had a 401(k) program that did what I wanted it to. (This fact is clearer in hindsight than it was at the time.) Knowing that business owners are not interested in becoming 401(k) experts, that they prefer and are smart to hire experts to do it for them, there is a great business opportunity for providers and advisors who are willing to help their clients “get to zero.” The number of areas where clients need help is vast, but focussing on the key problem areas outlined in this article can improve a client's plan operation by leaps and bounds, freeing energy to focus on what matters most—improving participant success rates.

The typical advisor does not follow the sort of service routine outlined in this article, defaulting instead to the typical annual educational meeting. Replace that largely ineffective model with a model whereby an advisor with strong expertise offers the right labor at the right place and time, and these common burdens of plan sponsors can nearly disappear—they can approach zero. 



Rich Budke is a founder of Bellevue Financial in Bellevue, WA, which offers financial advice, planning and products for area employers and individuals. A longtime business owner in industries as diverse as manufacturing, leasing, franchising and commercial real estate, his business acumen has grown numerous companies into businesses that are successful not only on the “bottom line,” but in terms of employee pride and satisfaction. Outside of work, Rich serves on the board of the Footsteps Missions of San Francisco, CA and on the Advisory Board of the PLU School of Business. He and wife Becky are proud parents of five adult children and four adopted orphaned Ethiopian grandchildren. They enjoy spending time together skiing, traveling and dining. (richb@bellevuefinancial.com)

Working with 403(b) and other tax-exempt plans?

Then the new **TGPC** credential is for you.

www.asppa.org/tgpc

ASPPA®
WORKING FOR AMERICA'S RETIREMENT

Knowledge • Advocacy • Credibility • Leadership

Grow Your Retirement Business: Establish Yourself as an Expert

by Paul Karasik

If you intend to grow your retirement business, establish yourself as an expert in specific retirement issues as well as in the topic of ever-changing retirement as a whole. Public relations and media exposure is one of the most effective ways to position yourself as a problem solver and advisor in the retirement marketplace.

Here are some steps you can take to gain public recognition as a retirement expert. Adapt these ideas to your target market and your business model. Your media exposure should be focused on issues relevant to the retirement market.

Write a Column or Article(s)

Contact your local newspapers and publications and identify the people who review article ideas. Most publications are continually seeking articles that are relevant to their readership. You have the best chance of getting exposure in the media if your idea has a “hook” to a current event or trend and has a great title. In many cases, you can get to know an editor or contact person and brainstorm article ideas.

You can position an article for the potential plan sponsors, participants or plan advisers who might need your services. For example, if you pitch an article to your local business publication, you can address pending legislation or changes in the regulations. Your local Chamber of Commerce might have a publication that would give you the perfect media exposure to your target market.

Articles and columns are particularly valuable because you can make reprints that you can give out at seminars, mail to clients and prospects and/or submit to other media outlets when you are seeking additional opportunities. You can also post the article on your Web site. Having an article in print solidifies your reputation and demonstrates your expertise in a very tangible way.

Be sure to make it clear when you agree to write an article that the publication needs to allow you to provide your contact information, ideally including telephone, e-mail and Web site. If possible, you should also try to obtain reprint permission.



Get Quoted or Interviewed in the Media

The best way to accomplish this task is to send out story ideas on current financial issues to media reporters. If they decide to do an article based on your idea, there is a good chance that they will call you for a quote or an interview. Therefore, keep your eyes open for good story ideas in the financial press, financial Web sites, professional financial associations and consumer financial magazines. Send out story ideas that connect to current events and trends as you come up with them. You can contact both the print and the broadcast media with your ideas.

Media referral programs are another extremely valuable resource. These programs are typically sponsored by a variety of professional financial associations. When you sign up for a program, you will be asked to state the topics on which you are an expert. Then, when the media contacts the group for information on particular topics, the group will refer the reporter to you.

The retirement plan landscape is in constant flux and it is a top concern for most working people. It is frequently in the news and, if you begin to make yourself available for media on related topics, it is very likely you will be contacted by media sources.

Issue Newsworthy Press Releases to the Media

Suppose your firm is involved in noteworthy charity work or recently received an award or was recognized in some way. Send out a quick press release on the event, and one of your local media outlets just might want to interview you or write about it.

If you are speaking or conducting a seminar, it is especially important to issue a press release to the local media. If your seminar is free, you will most likely get a free listing in the upcoming local events section, not to mention additional attendees. If the event may qualify for continuing education credits for specific groups, be sure to mention that fact also.

Get Your Own Talk Show

While this suggestion may sound implausible to you, it really isn't. Cable television channels in many areas of the country offer ordinary people the extraordinary opportunity to do a television show. Although the viewing audience is usually small, that doesn't matter, because you can leverage the opportunity. You can easily obtain a recording of the show and use it to create your own media kit, post on your Web site and/or pursue other publicity opportunities.

Likewise, contact your local radio stations and explore opportunities to host a radio show. If you can find a sponsor or even sponsor it yourself, your chances to secure a show will increase. Radio shows have helped many people establish themselves as experts, attract desirable clients and promote upcoming seminars.

Take Advantage of the Internet

There is a whole world of media exposure available on the Internet. Get familiar with industry Web sites and learn about their distribution channels. One simple but effective method is to e-mail comments and story ideas to financial Web sites.

Secure Speaking Engagements

Getting in front of groups of people will literally and figuratively position you as the expert. Whether you are conducting your own seminars or speaking at other organizations' meetings, you will automatically be seen as an authority on the subject at hand. Speaking to groups that comprise your target market is particularly effective. Rather than trying to sell them, play the role of the expert providing solutions to their financial problems or concerns. Remember: It's all about pain relief and problem solving.

Begin with easy speaking engagements that allow you to develop your presentations and delivery without a lot of pressure. Local Rotary Clubs and other organizations comprised of small business owners or non-profits are always looking for lunch speakers with timely topics.


As an advisor or consultant, you probably have numerous clients who are small business owners who belong to associations and organizations that would be perfect venues for you to speak. Use them as a resource and you will simultaneously position yourself as an expert and generate new business opportunities.

Write and Publish Your Own Book

Writing a book is a daunting challenge, but it can be done. You can write it yourself, look for a co-author or get help from a professor of the appropriate subject at your local college. If you want someone to write a book for you, type "ghost writers" into any Internet search engine and you will come up with hundreds of very competitively-priced services. You can do the same type of search for self-publishing services.

Writing and producing a book takes time and money, but the result will be an incredibly powerful tool for establishing yourself as an expert. In our achievement-driven culture, having a book under your belt is one of the most effective ways of establishing your credibility.

Conclusion

Public relations and media exposure create credibility in the marketplace—powerful reinforcement of your expertise. When you get exposure in print, be sure to use high quality reprints to generate more media exposure. Media exposure will provide you with one of the most effective selling techniques: the third party endorsement. Take advantage of it. 



Paul Karasik is a leading authority in the financial industry. He is the president of the Financial Advisor Coaching Institute, a sales and management training and consulting company. Paul has devoted 18 years helping America's financial advisors achieve their

goals. Paul is the author of four all time business classics, Sweet Persuasion and Sweet Persuasion For Managers, published by Simon and Schuster, Seminar Selling: The Ultimate Resource Guide for Marketing Financial Services, published by McGraw-Hill, and How to Market to High-Net-Worth Households. His most recent book is 22 Keys to Sales Success: How to Make It Big in Financial Services, published by Bloomberg Press. He is regularly featured in the leading financial industry publications including: On Wall Street, Investment Adviser, CFP Today, Registered Rep, National Underwriter, and Bank Investment Marketing. Paul is the founder of the American Seminar Leaders Association and a popular presenter at national meetings and conferences. (paul@paulkarasik.com; www.paulkarasik.com)

Media exposure will provide you with one of the most effective selling techniques: the third party endorsement.



Not to be Missed!

- ★ Fiduciary Best Practices
- ★ Fee Disclosure
- ★ Economic Uncertainty - Impact on Plans
- ★ Legislative Agenda
- ★ EBSA Priorities

DOL SPEAKS: The 2009 Employee Benefits Conference

April 30 - May 1, 2009 | Hilton Washington | Washington, DC

Co-sponsored by:



Official marketing sponsor:

PLANSPONSOR



LABOR, IMMIGRATION &
EMPLOYEE BENEFITS DIVISION
U.S. CHAMBER OF COMMERCE

To register online, visit www.asppa.org/dol.

CONFERENCE HIGHLIGHTS

- ▶ Washington Update with Brian Graff and Monika Templeman
- ▶ 401(k) Plans After the Meltdown - A Policy Oriented Session
- ▶ Plan Documentation - EGTRRA Restatements and PPA Interim Amendments



2009 MID-ATLANTIC BENEFITS CONFERENCE

HILTON WASHINGTON | WASHINGTON, DC

APRIL 29-30, 2009



To register online, visit www.asppa.org/mabc.

Have you made your 2009 PAC contribution?

Make supporting ASPPA PAC one of your New Year's Resolutions and contribute NOW!

Join ASPPA PAC today at www.asppa.org.



ASPPA® PAC

Latest Additions to the ASPPA Board of Directors

by Troy L. Cornett

Donna Brewster, QPA; Mark A. Davis, QPFC; Norman Levinrad, FSPA, CPC; and Lynn M. Young, MSPA, have been elected to ASPPA's Board of Directors and will each serve a first full term expiring in 2011.

Donna Brewster, QPA, is president and an owner of Brewster & Brewster, Inc. Donna earned her Accounting degree from Cleveland State University and the Qualified Pension Administrator (QPA) credential from ASPPA. Donna is a member of the American Institute of Certified Public Accountants, the Ohio Society of Certified Public Accountants and the National Association of Professional Women. She currently serves as Co-chair for the ASPPA Benefits Councils Committee and also Co-chair for the Women Business Leaders Forum Committee. Donna has worked in the retirement plan field for 19 years and often speaks to accountants and investment advisors regarding employee benefits.

Mark A. Davis, QPFC, is a 17-year veteran of the defined contribution industry. He is a Registered Investment Advisor (RIA) working with more than \$1,300,000,000 in qualified retirement plan assets. Mark is a partner with Kravitz Davis Sansone in Los Angeles, CA. He has earned the QPFC credential from ASPPA as well as the Accredited Investment Fiduciary designation from the Center for Fiduciary Studies.

Mark is a frequent speaker at national conferences on retirement investment and educational issues and he serves as host and panelist on PlanSponsor.com's national webcast series, "Plugged In." In 2008, Mark testified in front of the House Education and Labor Committee. In 2004, Mark was invited to testify before the Department of Labor's ERISA Advisory Council. Over the course of recent years he has been asked to meet with members of the Senate and House of Representatives and their staffs as well as the Government Accountability Office to help them to understand the way fees are charged in retirement plans. Mark served as the Co-chair of the 2003, 2004 and 2005 The ASPPA 401(k) SUMMIT Committee.

Mark began his financial services career writing communications and education materials and managing client relationships for clients of Fidelity Institutional


Retirement Services Company (FIRSCO).

Mark left Fidelity in 1994 to establish the Investment Education arm of Charles Schwab & Co.'s Retirement Plan Services team. In an earlier life, Mark was a professional actor and director and served on the faculties of Amherst and Mt. Holyoke Colleges.

He has a BA (cum laude) from Amherst College in Amherst, MA, and an MFA in Acting from the University of Minnesota. Mark is married with two children and lives in Thousand Oaks, CA.

Norman Levinrad, FSPA, CPC, was born and grew up in South Africa and immigrated to the US in 1980. He graduated from UCLA in 1982 with a degree in Applied Mathematics. Norman was enrolled as an EA in 1985, became an FSPA in 1986, is a member of the American Academy of Actuaries and is a member of the Leadership Council for ACOPA. He is a regular speaker at conferences on a variety of pension topics and has also published many articles on various pension topics. Norman is president and chief actuary of Summit Benefit & Actuarial Services, Inc. His interests are playing soccer, watching soccer, thinking about soccer and talking about soccer, and most importantly he is a life-long true-blue Chelsea fan. However, since Norman knows that his future in soccer is now behind him, he has taken up cycling as his primary sport.

Lynn M. Young, MSPA, is an Enrolled Actuary for Coble Pension Group, LLC, a pension consulting firm in Scottsdale, AZ. In her role as managing actuary, Lynn is responsible for the technical and legal compliance for Coble Pension Group as well as daily operations. Lynn has more than 20 years of experience in the consulting and administration of qualified defined benefit and defined contribution plans. She has been involved with ASPPA's Membership Committee for seven years and currently serves as its Co-chair. Lynn received a BS in Mathematics from DePaul University in Chicago, IL.

In addition to the four new members on ASPPA's Board of Directors, Ilene H. Ferenczy, CPC, and Adam C. Pozek, QKA, QPFC, have been elected to serve a second full term; and Renee J. Conner, QPA, has been elected to serve her first full term after completing an initial partial term. 



Troy L. Cornett is the Office Manager for ASPPA and is the liaison to the ASPPA Executive Committee, Board of Directors and ASPPA Management Team. He also manages ASPPA's Data Services department and is the Production Manager and Associate Editor of The ASPPA Journal. Troy has been an ASPPA employee since July 2000.

(tcornett@asppa.org)



SAVE THE DATE!



Western Benefits Conference

THE BEST OF BOTH WORLDS

Combining the best of Western Pension & Benefits Conference's Annual Meeting
and ASPPA's Summer Conference

Hyatt Regency Denver Convention Center | Denver, CO
June 28-July 1, 2009

WPBC
WESTERN PENSION & BENEFITS CONFERENCE

 **ASPPA**[®]
WORKING FOR AMERICA'S RETIREMENT

ASPPA PAC Faces New Challenges in 111th Congress

by Teresa T. Bloom, APM, and Danae (Dani) M. Kehoe

With a new 111th Congress, the ASPPA Political Action Committee (PAC) needs your support more than ever to ensure we maintain credible and trusted relationships with key lawmakers who support the employer-sponsored retirement system.

Qualified retirement plans will face many legislative challenges with a new 111th Congress, especially in light of the significant market downturn in the fall of 2008. The ASPPA PAC (which recently celebrated ten years of successfully protecting the interests of ASPPA members) remains one of the most effective tools available to the ASPPA Government Affairs Committee (GAC) and staff as we work with Congress to shape the laws that govern our business.

We encourage you to become active this year and support the ASPPA PAC. The employer-sponsored retirement plan system is a creature of federal law, which you—the ASPPA pension professional—are completely dependent upon. We need your support more than ever as we protect our positions against a growing list of competing interests we will face this year. It may be the most important investment you ever make.



ASPPA PAC[™]
OPENS THE DOOR

Fall 2008 Economic Downturn

In late September/early October 2008, Congress responded to an urgent plea from the Administration to intervene to stabilize financial markets. President Bush signed into law a bill (the Emergency Economic Stabilization Act) that authorizes \$700 billion for Treasury to use to buy up “troubled assets”—illiquid mortgage backed securities. This rescue package was in response to a huge stock market downturn and was aimed at opening up frozen credit markets.

The stock market downturn triggered Congressional attention to retirement issues, with the House Education and Labor Committee holding two hearings, on October 7 and October 22, 2008, focusing on how the financial crisis had affected workers’ 401(k) and defined benefit retirement accounts. At the October 7 hearing, Congressional Budget Office (CBO) head Peter Orszag testified that based on CBO estimates, about \$2 trillion dollars had been wiped

out from America’s retirement savings over a 15-month period. Another witness at this October 7 hearing suggested replacing tax incentives for retirement plans with a program under which workers could swap the troubled assets they hold in their retirement plans for investments guaranteed by Treasury.

Congress is expected to scrutinize the issue of retirement security in 2009 through further hearings and legislative proposals. There will also be some real debate on whether the current 401(k) system is up to the task of providing sufficient retirement security for working Americans, especially rank and file employees.

2009 Legislative Outlook

Prior to the drastic market downturn, legislative activity in 2008 focused on two primary issues: technical and other corrections to the Pension Protection Act of 2006 (PPA), and development of 401(k) fee disclosure legislation. Both of these issues will remain ongoing in 2009, and ASPPA GAC, supported by ASPPA PAC, will continue to work closely with House and Senate lawmakers to ensure that the interests of ASPPA members are heard.

In the 111th Congress, we expect to see increased scrutiny on the appropriateness of pension plan investments and 401(k)-related fees, along with possible additional limitations on nonqualified deferred compensation. We are also likely to see legislative initiatives on mandatory payroll deduction IRAs, an expansion of the Saver’s Credit and increased attention to longevity issues—how to make retirement savings last a lifetime.


In addition, ASPPA and ASPPA PAC will continuously be on guard against adverse pension proposals that may develop in the context of tax reform. Such proposals could occur as Congress tries to craft a revenue-neutral, permanent solution to the alternative minimum tax (AMT) problem or as a result of certain policy arguments made

regarding the “effectiveness” of the existing tax incentives for retirement savings. The current economic crisis will make revenue issues even more sensitive than they already are, and thus any and all tax preferences are potentially at risk. Rest assured that ASPPA and ASPPA PAC will work hard to ensure that retirement savings incentives are protected regardless of the direction Congress goes during this effort.

ASPPA PAC Opens the Door

Thanks in large part to the influence of ASPPA and the support provided by ASPPA PAC, most lawmakers have retirement security high on their priority lists. ASPPA assists them with acquiring the substantive, in-depth knowledge needed to best achieve the retirement security that they find so important. ASPPA personnel—buoyed by PAC support—play a key role in making sure retirement savings incentives are fair, equally available to small as well as large plan sponsors, applicable to all kinds of plan designs and for the benefit of all plan participants (whether rank and file or highly paid).

ASPPA and ASPPA PAC have a proud track record of success in the legislative arena. That record of success is built on ASPPA member and ASPPA PAC member support. We encourage existing members to continue that support. We also encourage those ASPPA members who have never contributed to the ASPPA PAC to contribute for the first time. To contribute online, please visit www.asppa.org, select Government Affairs/ASPPA PAC and proceed to the Members Only Section for an online contribution form. ASPPA deeply appreciates that support.

We promise continued intensive—and successful—efforts on your behalf in the year to come. 



Teresa T. Bloom, Esq., APM, Chief of Government Affairs, joined ASPPA in September 2004. Prior to working at ASPPA, Teresa was a pension law specialist in the Office of Policy and Research and the Office of Regulations and Interpretations at the DOL's Employee Benefits Security Administration, where she worked on a variety of policy and technical issues relating to Title I of ERISA. Teresa currently serves as a Government Affairs Committee Co-chair. (tbloom@asppa.org)

Danea (Dani) M. Kehoe, Esq., serves as an outside lobbyist and PAC consultant to ASPPA, bringing 27 years of experience working with trade associations, insurance companies and firms that specialize in employer-provided benefits and executive compensation. Dani spent almost 20 years as associate general counsel, government affairs to the National Association of Insurance and Financial Planners—NAIFA—formerly, NALU, where she worked on a variety of PAC issues. (danikehoe@gmail.com)

GAC Corner

ASPPA Government Affairs Committee Comment Letters and Testimony since August 2008

October 28

The ASPPA College of Pension Actuaries participated in group comments submitted to the House Ways and Means Committee in response to the Committee's October 29 hearing on economic recovery, asking for consideration of certain PPA technical corrections and other funding relief. www.asppa.org/pdf_files/081028_MultiIndustry_EconomicRecoveryJobCreationInvestment_Rangel_McCrery.pdf

September 23

Chairmen Rangel and Baucus, and Ranking Members McCrery and Grassley, asked Treasury to permit end-of-year valuation pension plans to determine final 2008 AFTAPs based on December 31, 2007 valuation results (at the request of ASPPA). www.asppa.org/pdf_files/WM_SFC_EOY_letter_to_Paulson.pdf

September 17

ASPPA and CIKR submitted comments for the record to the Senate HELP Committee's hearing entitled “401(k) Fee Disclosure: Helping Workers Save for Retirement.” [www.asppa.org/pdf_files/govpdffiles/091708.HELP.401\(k\).Fees.for.Record.ASPPA.CIKR.FIN.pdf](http://www.asppa.org/pdf_files/govpdffiles/091708.HELP.401(k).Fees.for.Record.ASPPA.CIKR.FIN.pdf)

September 15

ASPPA and CIKR submitted supplemental comments to the DOL on the participant fee disclosure proposed regulation, suggesting a disclosure alternative to the proposed quarterly statement requirement. [www.asppa.org/pdf_files/govpdffiles/091708.HELP.401\(k\).Fees.for.Record.ASPPA.CIKR.FIN.pdf](http://www.asppa.org/pdf_files/govpdffiles/091708.HELP.401(k).Fees.for.Record.ASPPA.CIKR.FIN.pdf)

September 10

Joan A. Gucciardi, MSPA, CPC, testified on behalf of ASPPA before the ERISA Advisory Council's Working Group on Spend Down of Defined Contribution Assets at Retirement. www.asppa.org/pdf_files/govpdffiles/2008.0910.Gucciardi.testimony.decumulation.FIN.pdf

September 8

ASPPA and CIKR submitted comments to the DOL on the participant fee disclosure proposed regulation. www.asppa.org/pdf_files/govpdffiles/090808.ASPPA.CIKR.Participant%20Fee%20Disclosure%20Comments.FIN.pdf

September 3

ASPPA submitted a comment letter to the IRS and Treasury requesting clarification of pre-funding restrictions on IRC §401(m) employer matching contributions. [www.asppa.org/pdf_files/govpdffiles/090308.IRC.4980\(d\).ASPPA.FIN.pdf](http://www.asppa.org/pdf_files/govpdffiles/090308.IRC.4980(d).ASPPA.FIN.pdf)

August 26

ASPPA submitted a comment letter to the IRS and Treasury recommending the IRS add a Code §414(s) safe harbor to exclude certain post-severance payments without discrimination testing. www.asppa.org/pdf_files/govpdffiles/082608_ASPPA_Final_Lt_IRS_414s.pdf

For all GAC filed comments, visit

www.asppa.org/government/gov_comment.htm.

Focus on Volunteers

by Jana J. Chambers, QPA, QKA, and Heidi J. Cook, CPC, QPA, QKA

As a non-profit organization, ASPPA depends on volunteers for a wide variety of needs. Not only do volunteers assist with congressional communication activities, they are the backbone of ASPPA's national and regional conferences, they provide the expertise for ASPPA's educational programs and are integrally involved in member outreach and local chapter liaison efforts.

One might assume that an ASPPA volunteer, who contributes time and expertise, receives in return only the knowledge that he or she has "made a difference" in an organization that represents the retirement plan profession. It has been our experience, however, that we, as volunteers, have received much more than we have given. We wondered if other volunteers felt the same. Take a look at what we found out from other ASPPA volunteers in this question and answer format.

Q: *How many years have you been an ASPPA member and how long have you been a volunteer?*

Maureen J. Desensi, QPA, has been an ASPPA member for more than 15 years. She was recruited by the Government Affairs Defined Benefit Subcommittee about a year ago.

Sheila Dott, CPC, QPA, passed her first exam in 1989. About five years ago, she saw an ad looking for volunteers as Subject Matter Experts for the Education and Examination Committee. She responded and has been volunteering on the E&E Committee ever since. She is currently serving as a Vice Chair.

Terry W. Dunger, APM, has been an ASPPA member for 20+ years and has been a volunteer for more than ten years in numerous roles, including on the Government Affairs Committee, the Regulations Committee, serving as a Membership Ambassador at conferences, the 5500 Committee, and he is currently serving on the Marketing Committee, the Membership Subcommittee and the Webcast Subcommittee.



Kasey R. Price, QKA, has been an ASPPA member for 13 years but is new to the volunteer experience. She completed the volunteer application immediately after attending the Generation X Reception in 2007 and was placed on the Conferences Committee soon thereafter. She worked on the Women's Business Leaders Forum in 2008 and is involved in the Benefits Conference of the South Committee for 2009.

Larry Silver, QKA, joined ASPPA in February 2006, and began volunteering immediately at the ABC level, expanding that involvement to the national level that same year. Larry is currently serving as Vice Chair of ASPPA's ABC Committee; as president, treasurer and ABC liaison for the ABC of New England and as Co-chair of the joint ASPPA/ABC Task Force.

Natalie R.E. Wyatt, QKA, QPFC, joined ASPPA in 2001 and her first volunteer experience occurred in 2004. Natalie has served on the board of the ABC of Cincinnati and served as their liaison to ASPPA. She has since volunteered as Vice Chair of the Recordkeeping Subcommittee (GAC), and has written two ASPPA *asaps* on 22c-2 (collaborating with John Randall on one). Natalie is currently a Co-chair of the Volunteer Subcommittee

(Membership) and serves on the Participant Communication Task Force (GAC), Webcast Subcommittee (GAC), Membership Committee, Marketing Liaison (Membership), Student Membership Task Force (Membership) and Continuing Education Task Force (Membership).

David J. Witz has been a member of ASPPA for at least ten years and is serving as a volunteer for The ASPPA Journal Committee.

Q: *What are the reasons you chose to volunteer with ASPPA initially?*

Terry wanted to stay in touch with fellow practitioners on a national level.

For Kasey, it was to get to know other ASPPA members better. “Prior to volunteering, I used to think that ASPPA members were a clique of highly educated and industry leaders and I wanted to get to know them.” Once involved, Kasey realized everyone had the same goal, working for ASPPA and working for America’s retirement.

Sheila was interested in the continuing education credits offered by serving on the E&E Committee, but more importantly, she says her work with the E&E Committee requires her to keep up to date. “When you are working on exams, you have to be up to date on every new law change.”

Larry said that before joining ASPPA and becoming involved as a volunteer, he recognized that all of the major players in our industry were part of ASPPA. He saw volunteering as a way to make contacts and increase his networking capabilities.

Natalie wanted the opportunity to network and to get to know others involved in her profession from her region of the country.

Q: *How has your volunteer experience changed your ASPPA event experience?*

The universal response from those interviewed was by expanded networking opportunities gained from volunteering.

Terry enjoys getting to know folks, especially those in our industry; and “volunteering helps you connect with others and create new relationships.”

Kasey, who had been a member for more than a decade before becoming involved, said “now I am more plugged in and connected to the industry I do business in.”

Natalie also emphasized that volunteering allowed her to get to know other ASPPA members not only located in her area but nationally. Natalie stated, “Before I volunteered, I wondered how the other attendees knew each other so very well. Now I understand that it’s through volunteerism that you meet other ASPPA members and develop

both personal and professional relationships that last a lifetime.”

Q: *Has your volunteer experience changed your work life?*

Maureen says that it is very important to be able to bounce ideas off others. As a volunteer, she has built a network of other professionals that she can call for just about anything.

Larry also mentioned that he now has contacts all over the country: “If I have issues and questions, I can go directly to my own, personally known, industry experts.”

Sheila has spent her entire professional career at one company. Volunteering for ASPPA’s E&E Committee has allowed her to expand her connections. “To be able to say that I am a Subject Matter Expert and involved in ASPPA does get noticed.”

For Terry, being a volunteer has provided additional personal, informational and referral resources.

Dave said he has benefited at work from having access to the “inside ear” and being able to stay current with regulatory changes.

Natalie works at a large company with many ASPPA members with whom she didn’t otherwise interact. As a volunteer, she’s been able to get to know fellow employees on a level she would not have known otherwise. It also creates a resource for work related questions.

Q: *What are the reasons you continue to volunteer with ASPPA?*

For Sheila, who is the “go-to” person at work, volunteering has increased her technical expertise and helps her to better fulfill the requirements of her position at work.

Terry continues to volunteer because of “the professional relationships that are created with fellow volunteers and being involved in something with meaning and value, both for myself and for my industry.”

Dave stays involved because he passionately believes in the ASPPA organization, what it stands for and how ASPPA prepares pension professionals for today’s challenges in our ever-changing industry.

Natalie enjoys meeting new people and her volunteer activities have allowed her to meet and get to know “high-profile” ASPPA members, as well as ASPPA staff

The universal response from those interviewed was by expanded networking opportunities gained from volunteering.



All of these members felt that their volunteer experience led to new relationships with other ASPPA members they would have not otherwise met that in turn enriched both their ASPPA event experience as well as their professional lives.

members who she might not have met otherwise. She also stated, “I get a sense of satisfaction when a task is completed and I feel I have made a worthwhile contribution.”

Q: Do you have any advice for members who have completed the volunteer application and have not yet been placed?

While most of the volunteers were either recruited by other ASPPA members or placed fairly soon after completing the volunteer application, that wasn't the case for Natalie. Natalie responded, “I initially requested a position on the E&E Committee and was not selected. Potential volunteers should be patient. Just because an opportunity isn't available immediately, it doesn't mean that you'll never be contacted.”

Q: Do you feel you have control over the time you commit to volunteer activities?

Maureen strongly feels that you are never forced into taking on a project for which you don't have time. During monthly committee calls, you can step up and volunteer for projects but no one person needs to be involved in every project.

Sheila said that in the beginning, the E&E Committee was new and all of the volunteers probably spent more time than they anticipated. “However, there has always been a sense that if a project is too big, there is always someone to lend a hand. Because ASPPA is a professional organization, everyone understands that we also have paying jobs that need to be tended to. When I have volunteered for non-professional organizations, there is not always that same understanding.”

Kasey's advice for new volunteers is to “start small and work up.” Don't over extend; do “what works for you.”


Larry said that sometimes a project that is expected to last a short time may expand and take up more time that originally expected. However, when that happens, everyone on the team works together. Not everyone has time to meet every week. There is always someone willing to step up and help you if you need help.

According to Natalie, “It is your choice whether or not to accept a volunteer position. The time commitment involved with each task is clearly represented initially. Obviously, leadership roles will require more of your time.”

Dave believes you will get out of volunteering what you put into volunteering. He emphasized that being a productive volunteer on a committee

does require a commitment of your personal time. “You may need to find extra hours to make it work and all committee members need to pull their own weight.” However, he also said, “I have found a home – something I can be passionate about which has not made it a difficult commitment to keep.”



All of these members felt that their volunteer experience led to new relationships with other ASPPA members they would have not otherwise met that in turn enriched both their ASPPA event experience as well as their professional lives. While the ASPPA volunteers we spoke with are involved in more than one volunteer opportunity, please note that there are many short-term opportunities available that do not require a large or long-term time commitment. If you, too, would like to get to know other ASPPA members and get involved, complete the volunteer application online at www.asppa.org/volunteer. 



Jana J. Chambers, QPA, QKA, is currently a vice president and operational risk & compliance manager with Bank of America Global Wealth & Investment Management, specializing in ERISA issues. Jana has been with Bank of America for ten years and has more than 20 years experience in the retirement industry, focused primarily on the administration of corporate retirement plans, including managing the day to day operational and trading activities of daily recordkeeping services for 401(k) plans; providing consultative support in retirement plan design, employee communications, regulatory compliance and government reporting; and assisting with product development, marketing and sales. Jana is a credentialed member of ASPPA as a Qualified Pension Administrator (QPA) and Qualified 401(k) Administrator (QKA). (jana.chambers@bankofamerica.com)

Heidi J. Cook, CPC, QPA, QKA, is a principal at InWest Retirement Solutions, where she is responsible for all compliance issues for the firm. With more than 20 years of experience in the retirement industry, Heidi specializes in the design and consulting of retirement plans for small to medium size businesses. She is currently the Vice Chair of the ASPPA Membership Committee, serves on the Heritage USA FCU Supervisory Committee and is a Court Appointed Special Advocate for CASA of West Texas. (hcook@inwest.net)

ABC of Chicago Focused on Growing Membership

by Kimberly J. Little

2008 brought new and exciting changes to the ASPPA Benefits Council (ABC) of Chicago.

With new leadership, the ABC of Chicago continued its history of putting together presentations to serve its growing membership. The new ABC board is made up of a diverse group of professionals including a regional director from the Employee Benefits Security Administration, third party administration and pension professionals, and an investment consultant.

The 2008 ABC board members would like to thank the previous board for all of their hard work and dedication to the council. Namely, Barry Kozak, MSPA; Sally Stresnak; Raymond D. Berry, MSPA; Kimberly A. Roberts, QPA; and Stephanie K. Galbreath, QKA, helped establish a foundation that the new board is building upon. With a focus on growing the membership by providing educational programs and networking at the breakfast meetings, the ABC of Chicago hopes to draw more professionals to its meetings.

The ABC of Chicago held programs in 2008 that focused on 401(k) fee disclosures, fiduciary responsibilities for plan sponsors and a lively discussion on the consequences of plan disqualification. In December, we wrapped up with a well attended presentation on EFAST2 from Janice M. Wegesin, CPC, QPA, of JMW Consulting, Inc., and enjoyed a cocktail holiday party. Speakers scheduled for 2009 include Richard A. Hochman, APM, from McKay Hochman Company, Inc.; Thomas J. Finnegan, MSPA, CPC, QPA, from The Savitz Organization, Inc.; and Joan A. Gucciardi, MSPA, CPC, from Gucciardi Benefits Resources. Keep an eye on the ABC of Chicago Web site, www.asppa-abc-chicago.org, for dates and topic information.

The ABC of Chicago is led by:

President:

Kimberly J. Little

Vice President for Membership:

JoAnn E. Cassell, QKA

Treasurer:

Mark A. Yahoudy

Secretary:

Steven L. Haugen

ABC Council Liason & Continuing Education Chair:

Marge M. Sawalski, CPC

The ABC of Chicago would like to exchange ideas, share information and establish new relationships with TPAs, attorneys, financial advisors, banks, CPAs and professionals that are dedicated to serving the retirement plan industry. Why not attend one of the ABC of Chicago's upcoming meetings and get connected with others.

For more information on the ABC of Chicago, please contact JoAnn Cassell at 847.413.6245 or info@asppa-abc-chicago.org.



Kimberly J. Little, ChFC, CLU, AIFA®, heads up the Retirement Plan Investment Consulting practice in Chicago for Plante Moran Financial Advisors. She has more than 18 years experience in the retirement plan industry and is the current president of the ABC of Chicago. (kimberly.little@plantemoran.com)

ABC of the Delaware Valley Completes Busy Year with Networking Reception

by Ken Marblestone

The ASPPA Benefits Council of the Delaware Valley (ABCDV) was founded in 1997 with the objectives of assisting its members in keeping abreast of laws and regulations affecting employee benefit plans, improving the knowledge of each member, encouraging its members to have as their ultimate goal the rendering of the best professional services to the public, and being the premier retirement benefits organization in the Delaware Valley.

The ABCDV owes its continued success to the efforts of a small group of dedicated professionals who have contributed their time and energy to ensure that the programs provided to our members are plentiful, relevant, varied and timely.

Recent Programs

The past year was very busy. We kicked off the year in January with a program entitled “403(b) Revolutionized!” devoted to the changes in documentation and administrative requirements for 403(b) plans. Our speaker was attorney Melissa B. Kurtzman, APM, of Wolf, Block Schoor & Solis-Cohen.

In March, we sponsored a breakfast program for members only to “Ask the Experts.” The program posted well-respected local practitioners at each table to discuss current issues of interest and to offer potential solutions to problems in a collegial setting.

On April 1, we hosted Judy A. Miller, MSPA, of ASPPA, for a Washington Update, which provided our audience with an insider’s view of the legislative and regulatory process relating to the latest hot topics.

After a break for the Mid-Atlantic Benefits Conference in May, we reassembled on June 19 for a program on “Plan Documents—What You Need to Know.” The program, presented by Robert M. Kaplan, CPC, QPA, of ING, provided an excellent overview of the EGTRRA restatement and submission process.

We began the fall season with a half-day program entitled: “How to Survive an IRS or DOL Audit.” Norman Jackson of the DOL and

The ABC of the Delaware Valley current leadership team consists of:

President:

Ken Marblestone

Immediate Past President and ASPPA Liaison:

John Van Buren, MSPA

Vice President and Meetings Chair:

Arthur Bachman

Treasurer:

R. Dennis Vogt

Secretary:

David M. Burns, MSPA, CPC, QPA

Membership Chair:

Robert A. Bildersee

Program Chair:

Miriam G. Matrangola, QPA, QKA

Public Relations Chair:

JoAnn Massanova, CPC

Continuing Education Chair:

Sandra Uzdavinis

Government Relations Chair:

Stephen H. Rosen, MSPA, CPC

In addition, we are fortunate to benefit from the invaluable insights and experiences of the following board members:

John Bernard

Susan DeMinico

Joseph J. Leube, FSPA, CPC

Patrick McCallister

Mitchell Welsch

George Brim and Kathleen Schaeffer of the IRS represented the government, with local practitioners (and ABCDV board members) Art Bachman and Robert A. Bildersee moderating the panel.

In November, we sponsored a networking reception at a Center City Philadelphia restaurant. This reception, which was free to members, provided an opportunity for all local benefits professionals to mingle with their colleagues in an informal atmosphere.

Our members had the opportunity to pick up nine hours of continuing education credit just by attending our program meetings in 2008. We are planning an aggressive schedule for 2009, including a full-day program with Sal L. Tripodi, APM, in September 2009, and encourage all benefits professionals in the Delaware Valley to take advantage of the outstanding educational opportunities we offer.

Promoting Careers in Retirement

As part of our continuing effort to promote careers in the retirement plan industry, the ABCDV has a long-standing practice of awarding scholarships to deserving students who are pursuing a course of study in actuarial science at Temple University's Fox School of Business and Management. We are pleased to announce that earlier this year, we awarded two \$1,000 scholarships as part of this program.

We're on the Web

Our ABC developed and supports its own Web site. Using this site, our members and other interested benefits professionals can find out more about us, join and pay dues, learn about our programs and register to attend programs while online. If you haven't visited our site yet, please do so at: www.asppa-abc-delval.org.



Ken Marblestone is an attorney and principal in the MandMarblestone Group llc, located in Philadelphia, PA. Ken has more than 30 years of experience in the design and administration of qualified retirement plans. Ken currently serves as president of the ABCDV. (marblestone@mand.com)



ASPPA Recordkeeper Certification

Let clients know that your firm has practices in place that are certified and audited as the best practices in the industry.

- ASPPA-developed standards of practice with certification conducted by CEFEX
- Independently audited
- Three service classifications



- Registration in a public database and a certificate of registration
- Annual assessment to maintain certification

Be a part of it all!

For additional information go to www.asppa.org/recordkeepercert.



Knowledge • Advocacy • Credibility • Leadership



Welcome New Members and Recent Designees

▲ MSPA

William P. Bishop, MSPA, CPC, QPA
 Richard A. Block, MSPA
 Eric P. Brandon, MSPA
 Aaron Deitsch, MSPA
 Louis J. Schichnes, MSPA, CPC

▲ CPC

John R. Andresen, CPC, QPA, QKA
 William P. Bishop, MSPA, CPC, QPA
 Richard N. Carpenter, CPC
 Brooke K. Cozort, CPC, QPA, QKA
 Kathleen H. Dyar, CPC, QPA, QKA
 Laura S. Guin, CPC, QPA, QKA
 Sherwood Henderson, CPC
 Kelly Kilmartin, CPC, QPA, QKA
 Angela R. Nordstrom, CPC, QPA, QKA
 Tami M. Plummer, CPC, QPA
 Annie Roman, CPC
 Kevin Skow, CPC, QPA, QKA
 Carla J. Stucky, CPC, QPA, QKA
 Erin M. Swanson, CPC, QPA, QKA
 Heather K. Yeager, CPC, QPA, QKA

▲ QPA

William P. Bishop, MSPA, CPC, QPA
 Vincent J. Bocchinfuso, QPA, QKA
 Steven L. Bontjes, QPA, QKA
 Elizabeth Carol Brinkley, QPA, QKA
 Noah Buck, QPA, QKA
 Barbara I. Campbell, QPA, QKA
 Kimberly J. Cochrane, QPA
 Peter J. DeMars, QPA, QKA
 Alison A. Farrin, QPA, QKA
 Kevin E. Hicks, QPA, QKA
 Ryan E. Kettel, QPA
 Gregory Laboy, QPA
 John A. Lamancusa, QPA, QKA
 Michael R. McMorris, QPA, QKA
 William Michael McMurtry, QPA
 Courtney Morrow, QPA, QKA
 Tami M. Plummer, CPC, QPA
 Jeanna M. Pournaras, QPA
 Bryce E. Raymond, QPA, QKA
 Larry A. Robertson, QPA
 Wesley M. Schneider, QPA, QKA
 Wendy Sierra-Freeburg, QPA, QKA
 Wesley T. Stohler, QPA, QKA
 David S. Swallow, QPA, QKA
 Conni M. Toth, QPA, QKA
 Jennifer R. Wallace, QPA, QKA
 Thomas J. Woodford, QPA, QKA
 Patricia Zellner, QPA, QKA

▲ QKA

Desiree Allred, QKA
 Eric Benedict, QKA
 Elizabeth Bergeson, QKA
 Kimberly A. Blanton, QKA
 Kimberly N. Blum, QKA
 Vincent J. Bocchinfuso, QPA, QKA
 Grant Brown, QKA
 Noah Buck, QPA, QKA
 George E. Carpenter, QKA
 Donna L. Chalupsky, QKA
 Benjamin Chappell, QKA
 Justin E. Charlton, QKA
 Thong D. Chau, QKA
 Christopher Chiaro, QKA
 Joyce Clouthier, QKA
 Aisha Collins, QKA
 Brendan Crowe, QKA
 Kristen Davis, QKA
 Wendy E. Dejean, QKA
 Patricia DeMarco, QKA
 Ilene D. Deutsch-Riegel, QKA
 Rebecca DiCeglie, QKA
 Bryon DiGiorgio, QKA
 Szilvia Drimusz, QKA
 Anne Dudley, QKA
 MaryBeth E. Dulik, QKA
 David E. Entenmann, QKA
 Steven A. Ferguson, QKA
 Darlene E. Finzer, QKA
 Keith Frase, QKA
 Nathan French, QKA
 Dominick Gallares, QKA
 Sadie Gaston, QKA
 Allison M. Gehring, QKA
 Melinda Grason, QKA
 Jonathan Graziano, QKA
 Agnes Green, QKA
 Carla Hagen, QKA
 Kailtyn Hagen, QKA
 Desee Hagiandreu, QKA
 Melissa R. Hanks, QKA
 Gabriel Hanselman, QKA
 Timothy Hawke, QKA
 Marcia A. Herth, QKA
 Kevin E. Hicks, QPA, QKA
 Janet R. Holmes, QKA
 Kenneth Hsieh, QKA
 Tara A. Huebner, QKA
 Cherri Jackson, QKA
 Christopher Jerolamon, QKA
 Andrea J. Johnson, QKA
 Tracy Johnson, QKA
 Jennifer M. Keller, QKA
 Caroline J. Khachaturian, QKA
 Davy L. Knox, QKA
 Joan A. Kryven, QKA
 Sue LeGros, QKA
 Chris Leshner, QKA
 Cossette Lewis, QKA
 Ai Chou Li, QKA
 Jerry Lopez, QKA
 Brandie Lord, QKA
 Chantal Louvet, QKA
 Andy Lovell, QKA
 John Makarevich, QKA
 Leann K. Malloy, QKA
 Lynnell A. Martin, QKA
 Colleen McCormick, QKA
 Nicole McWilliams, QKA
 Greg Millard, QKA
 Andrea R. Miller, QKA
 April A. Mitchell, QKA
 Lucinda Morris, QKA
 September L. Morris, QKA
 Courtney Morrow, QPA, QKA
 Erin L. Mulqueen, QKA
 Sherri A. Newmon, QKA
 David Nishimura, QKA
 Julia Noonan, QKA
 Connie Outlaw-Pruitt, QKA
 Amy D. Overstreet, QKA
 Georgia Panosellis, QKA
 Erin Peterson, QKA
 Terrie Plewes, QKA
 Cynthia Ramo, QKA
 Michael J. Razny, QKA
 Barbara Redfield, QKA
 Michael Reid, QKA
 Brianne Riley, QKA
 Theresa Ruby, QKA
 Jackie Sgarlata, QKA
 Martha S. Sharp, QPA, QKA
 Jaime Smalley, QKA
 Kevin Smith, QKA
 Jennifer L. Stenson, QKA
 Summer L. Stevenson, QKA
 Wesley T. Stohler, QPA, QKA
 Christopher D. Switaj, QKA
 John Thorne, QKA
 Judy Thuenemann, QKA
 Conni M. Toth, QPA, QKA
 Tzvetelin Tzotchev, QKA
 Maco Vann, QKA
 John Weir, QKA
 Natalie M. Wier, QKA

William G. Robertson, QKA, QPFC
 David J. Sanza, QKA, QPFC
 Samuel Stauber, QPFC
 Craig N. Thompson, QPFC
 Sandra E. Ward, QPFC
 Robert A. Willow, QPFC

▲ APM

Ronald Koniuta, APM
 Jeremy M. Pelphrey, APM
 Michelle J. Scott, APM

▲ AFFILIATE

Yaqub Ahmed
 Julie A. Altig
 James J. Arnold
 Nandi A. Ashley
 Antonio L. Bacchetta
 Cynthia Burnett
 Michael M. Butler
 Frank A. Castrofilippo
 Larry E. Crocker
 Kimberly A. Culver
 Teri Druhot
 Karen Foster
 Sheldon Geller
 Joseph Gibson
 Thomas Gillespie
 Christopher P. Goodson
 Craig Harrell
 Tara M. Hessert
 Julian G. Hunt
 Vallarie A. Iapalucci
 Hui Hui Jiang
 Lisette Jones
 Betty J. Kellas
 Daniel Lubicky
 Craig A. Mather
 Richard G. May
 Barbara McCormick
 Phillip Miller
 Michelle L. Nelms
 Caroline Perry
 Carla Petty
 Jennifer San Fillippo
 Megan Schulze
 Beverly R. Shouse
 Susan Stevens
 Karl E. Stoeckle
 Kristin M. Teller
 Lee Anne Thompson
 David WW Van Ness
 David M. Werntz
 Holly A. West
 Janis A. Williams
 Randall J. Wostratzky
 Michael Zahariades

▲ QPFC

Michele M. Caldwell, QPA, QKA, QPFC
 Patricia T. Campbell, QPFC
 Jeremy A. Chambers, QKA, QPFC
 Joshua A. Griffith, QPFC
 Cynthia L. Hall, QKA, QPFC
 Anita M. Kerr, QPFC
 Peter Kirkfield, QPFC
 Jill R. Kookan, QPFC
 Cherie Matthys, QPFC
 Ryan McLaughlin, QPFC
 Matthew A. Parker, QKA, QPFC
 Lori Plescia, QPFC

Calendar of Events

ASPPA

Date	Description	CE Credits
Mar 21	The ASPPA 401(k) SUMMIT PFC-1 and PFC-2 Review Sessions • San Diego, CA	
Mar 22 – 24	The ASPPA 401(k) SUMMIT • San Diego, CA	15
Apr 17	Early registration deadline for spring examinations	
Apr 17 – 20	EA-2B Review Courses • Chicago, IL	
Apr 20 – 21	Great Lakes Benefits Conference • Chicago, IL	15
Apr 29 – 30	Mid-Atlantic Benefits Conference • Washington, DC	11
Apr 30 – May 1	DOL Speaks: The 2009 Employee Benefits Conference • Washington, DC	11
May 13	Final registration deadline for spring examinations	
May 14 – Jun 26	Spring 2009 examination window (DB, DC-1, DC-2, DC-3, PFC-1 and PFC-2)	
Jun TBD	ACOPA Actuarial Conference • Boston, MA	TBD
Jun 12	Postponement deadline for spring DB, DC-1, DC-2, DC-3, PFC-1 and PFC-2 examinations	
Jun 18 – 19	Women Business Leaders Forum • Nashville, TN	15
Jun 28 – Jul 1	Western Benefits Conference • Denver, CO	24
Jul 16	Northeast Benefits Conference • Boston, MA	8
Jul 17	Northeast Benefits Conference • New York, NY	8
Aug 14 – 15	ACOPA Actuarial Conference • Chicago, IL	TBD
Sep 28	Early registration deadline for fall examinations	
Oct 2-5	EA-2B Review Courses • Chicago, IL	

** Please note that when a deadline date falls on a weekend, the official date shall be the first business day following the weekend.

** Please note that listed CE credit information for conferences is subject to change.

AIRE & ERPA

Jan 6 – Feb 17

ERPA—SEE Winter Examination Window

Feb 2

ERPA—SEE Winter Examination Postponement Deadline

Apr 25

Live ERPA Review Courses (prior to NIPA Annual Forum and Expo) • Las Vegas, NV

Apr 30

ERPA—SEE Winter Examination Window Candidate Grade Notification

Jun 27

Live ERPA Review Courses (prior to Western Benefits Conference) • Denver, CO

Jul 6

ERPA—SEE Registration Deadline for Summer 2009 Examination

Jul 7 – Aug 31

ERPA—SEE Summer Examination Window

Aug 14

ERPA—SEE Summer Examination Postponement Deadline

Oct 31

Live ERPA Review (prior to ASPPA Annual Conference) • National Harbor, MD



American Institute
of Retirement Education
A Partnership of ASPPA & NIPA

ABC Meetings

February 24

ABC of Greater Cincinnati

Topic TBD
Charles D. Lockwood

March TBD

ABC of Detroit

Form 5500 Update
Janice M. Wegesin, CPC, QPA

March 24

ABC of Greater Cincinnati

Topic TBD
Craig P. Hoffman, APM

April TBD

ABC of Greater Cincinnati

Annual Membership
Appreciation Luncheon

June TBD

ABC of Chicago

Topic TBD
Richard A. Hochman, APM

June TBD

ABC of Greater Cincinnati

Testing and Reporting
Regulations Update
John P. Stebbins, QKA, and
Mike F. Kraemer

June TBD

ABC of New York

Cash Balance Plans
Kevin J. Donovan, MSPA

August 25

ABC of Greater Cincinnati

Topic TBD
Robert M. Kaplan, CPC, QPA

September TBD

ABC of Chicago

Topic TBD
Thomas J. Finnegan, MSPA,
CPC, QPA

October TBD

ABC of Greater Cincinnati

President's Party

November TBD

ABC of Greater Cincinnati

Welcome Reception for ASPPA
Cincinnati Pension Conference

November TBD

ABC of Greater Cincinnati

ASPPA Cincinnati Pension
Conference

December TBD

ABC of Chicago

Topic TBD
Joan A. Gucciardi, MSPA, CPC

For a current listing of ABC meetings, visit www.asppa.org/membership/member_local.htm.

Fun-da-Mentals

Sudoku Fun

Every digit from 1 to 9 must appear:

- In each of the columns,
- in each of the rows,
- and in each of the nine mini-boxes

						6	2	
9				3		7		
		1		9	4			
	9			1				3
6		3		5	8	1		
		4					5	
	4		5					
3	8	7		4	6			
				8			3	4

Level = Easy

Answers will be posted on ASPPA's Web site in the Members Only section. Log in. Click on *The ASPPA Journal*. Scroll down to "Answers to Fun-da-Mentals."

MCHUMOR.com by T. McCracken



"Say, aren't you the fellow who recommended I invest in all those now defunct techno stocks?"

Word Scramble

Unscramble these four puzzles—one letter to each space—to reveal four pension-related words.

ICE SEX

A BAD LOCK

IT RANG

LET AID

BONUS: Arrange the boxed letters to form the Mystery Answer as suggested by the cartoon.

Mystery Answer: To take a " _____ ."

Answers will be posted on ASPPA's Web site in the Members Only section. Log in. Click on *The ASPPA Journal*. Scroll down to "Answers to Fun-da-Mentals."



Why the auditor left the office.



Can you
really afford
business as
usual?

**Build a successful TPA practice
with DATAIR Software.**

Programs to help you design and administer
DC/401(k), DB, and Cafeteria Plans.
Includes documents & government forms.



DATAIR

EMPLOYEE BENEFIT SYSTEMS, INC.

(888) 328-2474

www.DATAIR.com

TAP DANCING.

Not required when explaining
Nationwide Retirement Clear AdvantageSM pricing.

LIFE COMES AT YOU FAST[®]

With Nationwide Retirement Clear Advantage, there are no surprises or hidden fees and no confusion as to what small businesses are getting in a retirement plan. It's one retirement plan that's easy to explain. And if you still feel like dancing, that's okay. A little jig after a sale never hurt anyone.

For more information on Nationwide Retirement Clear Advantage, call **800-626-3112**, ext. NW401K (694015) or visit nationwide.com/rpsales



On Your Side[®]